Petition

Office-Supreme Court, U.S.
FILED
AUG 4 1981
ALEXANDER L. STEVAS,
CLERK

NO. 81-284

IN THE

Supreme Court of the United States

OCTOBER TERM 1981

EDWARD D. CAMPBELL
Petitioner,

v.

STATE OF WASHINGTON and KING COUNTY
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE WASHINGTON STATE SUPREME COURT AND DIVISION I OF THE COURT OF APPEALS OF WASHINGTON

EDWARD D. CAMPBELL
Pro Se

Office and P. O. Address:
3015 N.W. Market, No. 308
Seattle, Washington 98107
(206) 783-3410

ABCD AT CRAFTSMAN PRESS, SEATTLE

QUESTIONS PRESENTED FOR REVIEW

1. Can the State refuse to enforce its health laws that clearly apply to alcoholic beverages and their distribution without:

A. Violating the Fourteenth Amendment of the United States Constitution?

B. Violating the Declaration of Rights of the World Health Treaty Organization Treaty of 1948 to which the United States is a party, and thus violating Article 6 § 2 of the United States Constitution?

C. Violating the First Amendment of the United States Constitution by depriving the people of their right to be informed?

2. Can the State refuse to comply with the Federal Food, Drug and Cosmetic Act and the Federal Trade Commission Act in its sale and regulation of alcoholic beverages?

3. Can King County adopt a policy of nonenforcement of State public health laws and nuisance laws as they apply to the sale

and distribution of alcoholic beverages without violating the Federal Civil Rights Acts embodied in 42 USC 1983 and 42 USC § 1985 by invidiously discriminating under color of state law against the class of alcoholic beverage consumers and subclasses of alcoholics and potential problem drinkers?

4. Can King County shield its own liability for violation of Federal Civil Rights Acts by appeal to prosecutorial immunity where the prosecutor is not named and only the county is named in the suit?

5. Can the State of Washington shield its own violation of treaty and constitutional rights behind ancient legislative grants of immunity to one of its municipal corporations and its Officers? Can it do so even though such persons are not parties to the action? If it insists on treating such parties as real parties in interest does it

not thereby subject itself to the provision of 42 USC § 1983 and 42 USC § 1985?

6. Except where specifically granted by the constitution of the United States, does not the grant by the State of sovereign immunity to individuals violate Article 1 § 10 forbidding the granting of any Titles of Nobility?

7. Can the State Courts refuse to file a brief of a petitioner that complies as to form and style requirements, on the basis of its contents without violating the right to petition the government embodied in the First Amendment and Fourteenth Amendment of the United States Constitution?

8. Has the Bureau of Alcohol, Tobacco and Firearms exclusive jurisdiction over the labeling and advertising of alcoholic beverages under the Federal Alcohol Control Act of 1935 to the exclusion of the Food and Drug Administration under the Food, Drug and Cosmetic Act of 1938 and the

Federal Trade Commission under the 1938 amendments to the Federal Trade Commission Act?

9. Can the State, as a liquor proprietor, fail to accord the public with basic warnings of the dangers therein to be found and the means to avoid the same (products liability) without violating the Ninth Amendment to the United States Constitution by committing tortious conduct against the people that they have reserved as one of rights to be free from?

10. Can the State, as proprietor of alcoholic beverages, fail to give warnings of the dangers thereof as may be found in intended use as well as the ways to avoid such dangers without violating the peoples' right to know guaranteed by the First and Fourteenth Amendments of the United States Constitution where such right to knowledge

is clearly called for by applicable legislative enactment and administrative regulation?

11. Can the State adopt as legal principles determinative of a judicial case, controverted factual determinations made outside of the scope and authority of the State government and its subsidiaries by persons with no responsibility to the people of that state without:

A. Violating the due process clause of the Fourteenth Amendment, and

B. Violating the guarantee of a republican form of government contained in Article IV § 4 of the United States Constitution.

TABLE OF CONTENTS

	Page
Jurisdictional Grounds for Review . .	1
Constitutional, Statutory, Treaty, and Administrative Code Involvement	2
Statement of Case	6
Argument	13
Application of the Hyperbolic Dicta of the Restatement of Torts (Second) § 402A, Comments i and j, for Fact Finding Legal Conclusions is Invidious Discrimination	31
Who are the Defendants in This Case	43
How Does the County Discriminate .	44
State Has No Immunity From Tortious Conduct	46
Board and Member Immunity is Distinguishable From State Liability	49
Fundamental Legal Principles	50
First Amendment Protection	59
The Basic Thrust of Protection . .	62
Appendices	
Appendix A	A-1
Appendix B	B-1
Appendix C	C-1

TABLES OF AUTHORITY

Table of Cases

Page

Asakaura v. City of Seattle, 265 U.S. 332, 44 S. Ct. 515, 618 L. Ed. 1941 (1923) 56

Avery v. Midland County, Texas, 390 U.S. 474, 20 L. Ed. 2d 45, 88 S. Ct. 1114, on remand, 430 S.W.2d 487 (Texas 1968) 33

Bacardi Corp. v. Domenech, 331 U.S. 150, 61 S. Ct. 219, 85 L. Ed. 98 (1940). 55-56

Bandini Petroleum Co. v. Superior Court of State of California, 284 U.S. 639, 76 L. Ed. 136, 52 S. Ct. 103 (1931) 33-34

Brown-Forman Distillers Corp. v. Matthews, 435 F Supp. 5 (W.D. Ky. 1976) 11,19,20,21,28,29,30

California Liquor Dealers v. Midcal Aluminum, 445 U.S. 97, 63 L. Ed. 2d 235, 100 S. Ct. 937 (1980). 41

Carrington v. Rash, 380 U.S. 89, 85 S. Ct. 775, 13 L. Ed. 2d 675, on remand, 389 S.W.2d 945 (Texas 1965). 33

Coleman v. Darden, 595 F.2d 533 (C.A. Colo. 1979) 34

Page

Davis v. Bucher, 451 F. Supp. 791 (D.C. Pa. 1978) 34

Evangelical United Brethren Church of Adna v. State, 67 Wn.2d 246, 207 P.2d 440 (1965) 46,47

Garner v. Teamsters, Chaffeurs & Helpers Local Union No. 776, 346 U.S. 485, 98 L. Ed. 2d 228, 74 S. Ct. 161 (1953). 39-40

Grand Canyon Airlines Inc. v. Arizona Aviation Inc., 12 Ariz. App. 252, 469 P.2d 486 (1970) 40-41

Griswold v. Connecticut, 381 U.S. 479, 14 L. Ed. 2d 510, 85 S. Ct. 1678 (1965) 61

Hauenstein v. Lyhham, 100 U.S. 483, 25 L. Ed. 628 (1880) 51

In re Young, 95 Wn.2d 216, 616 P.2d 628 (1980) 20

Iowa Motor Vehicle Ass'n v. Board of Railroad Commissioners, 207 Iowa 461, 221 N.W. 364 (1928), affirmed, 280 U.S. 529, 74 L. Ed. 595, 50 S. Ct. 151 40

Jacobsen v. State, 89 Wn.2d 104, 569 P.2d 1152 (1977). 32

Kalb v. Feverstein, 308 U.S. 433, 84 L. Ed. 370, 60 S. Ct. 343 (1940), 41 Am. Bankr. Rep. N.S. 501 40

Page

Kennett v. Chambers, 55 U.S. 38, 14 L. Ed. 316 (1852) 51

King v. Seattle, 84 Wn.2d 239, 525 P.2d 228 (1974) 50

Lamont v. Postmaster General, 381 U.S. 301, 14 L. Ed. 2d 398, S. Ct. 1493 (1965) 61

LeDent v. Wolff, 334 F. Supp. 64 (D.C. Neb. 1971), vacated on other grounds, 460 F.2d 1001. . . . 59

Lee v. State of Florida, 392 U.S. 378, 20 L. Ed. 2d 1166, S. Ct. 2096 (1968) 40

Machesky v. Bizzel, 414 F.2d 283 (5th Cir. 1969) 40

Martin v. Struthers, 319 U.S. 141, 87 L. Ed. 1313, 63 S. Ct. 862 (1943) . 61

Namba v. McCourt, 185 Ore. 579, 204 P.2d 569 (1949) 59

Owen v. City of Independence, 445 U.S. 622, 63 L. Ed. 2d 673, 100 S. Ct. 1398 (April 16, 1980) 43-44

Oyama v. California, 332 U.S. 633, 68 S. Ct. 269, 92 L. Ed. (1948) . . 59

People of Saipan v. United States Department of Interior, 502 F.2d 90 (9th Cir. 1974) 55

Peres v. Lippolf, 32 Cal. 2d 711, 198 P.2d 17 (1948). 59

Page

Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 23 L. Ed. 2d 371, 89 S. Ct. 1794 (1969). 60

Ritchie v. Johnson, 158 Kan. 103, 144 P.2d 925 (1944) 41

Sei Fujnii v. State, 38 Cal. 2d 718, 242 P.2d 617 (1952) 51

Smith v. O'Grady, 312 U.S. 329, 85 L. Ed. 859, 61 S. Ct. 572 (1941). . 40

Stanley v. Georgia, 294 U.S. 557, 22 L. Ed. 2d 542, 89 S. Ct. 1243 (1969) 60

State v. Fitzpatrick, 5 Wn. App. 661, 491 P.2d 262 (1971) 14

State v. Twitchell, 61 Wn.2d 403, 378 P.2d 494 (1963) 43

Testa v. Katt, 330 U.S. 386, 91 L. Ed. 967, 67 S. Ct. 810, 172 A.L.R. 225 (1947). 40

Time, Inc. v. Hill, 385 U.S. 374, 17 L. Ed. 2d 456, 87 S. Ct. 534 (1967). 60-61

United States v. Article of Drug, 394 U.S. 784, 89 S. Ct. 1410, 22 L. Ed. 2d 626 (1966). 20,30

United States v. Conroy, 589 F.2d 1268 (5th Cir. 1979, rehearing denied, 594 F.2d 241, certiorari denied, 444 U.S. 831, 62 L. Ed. 2d 40, 100 S. Ct. 60. 39

United States v. Grimes, 229 F. Supp. 289 (D.C. Ga. 1964) 58

Page

United States v. Klans, Knights of the KKK, 194 F. Supp. 897 (D.C. Ala. 1961). 58

United States v. Lynch, 94 F. Supp. 1011, aff'd., 189 F.2d 476 (5th Cir. 1951). 58

United States v. Stewart, 411 U.S. 60, 85 L. Ed. 40, 61 S. Ct. 102, rehearing denied, 311 U.S. 729, 85 L. Ed. 475, 61 S. Ct. 390. 20

United States v. Zacks, 375 U.S. 59, 11 L. Ed. 2d 128, 84 S. Ct. 178 (1963) 20

Van Sickle v. Shanahan, 212 Kan. 426, 511 P.2d 223 (1973) 32-33

Western A.R.R. v. Henderson, 279 U.S. 639, 73 L. Ed. 2d 884, 49 S. Ct. 445 (1929) 34

Constitutional Provisions

U.S. Const. Art. 1 § 9 56

U.S. Const. Art. 1 § 10 2,9,42,56

U.S. Const. Art. 4 § 4 2,32

U.S. Const. Art. 6 § 2 2,39,51

U.S. Const. amend. I 2,9,11,59,60

U.S. Const. amend. IX 2,9,42

U.S. Const. amend. XIV. . . . 2,9,33,41,56 et seq.

U.S. Const. amend. XVIII 2,50

Page

U.S. Const. amend. XXI 2,50

Wash. Const. Art. 11 § 26 46

Statutes

RCW 4.92.010 3,46

RCW 4.92.090 3,46,55

RCW 4.96.010 3,46

RCW 9.04.050 45

RCW 9.04.050-070 3

RCW 9.04.060 45

RCW 9.66.010 45,46

RCW 9.66.010(1), (4) 3,8

RCW 36.28.010 3

RCW 36.28.010(1) 43

RCW 36.28.011 3,43

RCW 66.08.010 3,48

RCW 66.08.030 (2) 49

RCW 66.08.030(2)(n) 3

RCW 66.08.030(2)(y) 3,7

RCW 66.06.030(7) 49

RCW 66.08.100 3,5,49

RCW 69.01.160 38

	Page
RCW 69.04.008	3
RCW 69.04.009	3
RCW 69.04.013	3
RCW 69.04.015	3
RCW 69.04.016	3,7,38
RCW 69.04.040	44
RCW 69.04.040(1),(2), (3), (4)	3,7
RCW 69.04.040(5)	3
RCW 69.04.060	44,45
RCW 69.04.250	3
RCW 69.04.450	3,7
RCW 69.04.470	3,7
RCW 69.04.480	3
RCW 69.04.500	3,7
RCW 69.04.510	3,7
RCW 69.04.530	3,7
RCW Ch. 70.106	8
59 Stat. 1031, PL 643 86th Cong. 2d Sess. (1948) Declaration of Rights, World Health Organization Treaty	2,6,39
62 Stat. 441, PL 643 86th Cong. 2d Sess. (1948)	51-52

	Page
15 USC § 52	2-3,39
15 USC § 55	39
15 USC § 55(a)(1)	3
15 USC § 55(b)	3
15 USC § 55(c)	3
15 USC § 1261	8,42
15 USC § 1261(f), (g), (i), (k), (l) (n)	3
21 USC §§ 1-15	25
21 USC § 321(f), (g), (j), (k), (m), (n)	3
21 USC § 331(a), (b), (c)	3,7
21 USC § 343(a), (f).	3,7
21 USC § 352(a), (c), (f)	3,7
21 USC § 371(d)	3,21
27 USC § 205	3
28 USC § 1257(2)	1
28 USC 1257(3)	1
42 USC § 1983	3,12,42,43,56,59
42 USC § 1985	3,12,42.43,56,59

Page

Rules and Regulations

21 CFR 1.21 8

21 CFR 201.5 3

21 CFR 201.5(a),(b), (c), (d), (e), (f), (g). 7-8

WAC 314-16-120 4

WAC 314-20-100(5), (6) 4

WAC 314-52-015 47

WAC 314-52-015(1), (11), (13) 4

WAC 314-52-015(8) 4,48

WAC 314-52-112(4) 4

Textbooks

CCH Food Drug Cosmetic Law Reports II 50.031 20,21

82 C.J.S. Statutes § 336 20

Restatement of Torts (Second) § 402(A) i, j . . . . 12,14,15 ,31,32 et seq.

3 Sutherland, Statutory Construction, 3d Ed. § 71.02 20,29-30

Page

Other Authority

Alcohol Science and Society, Quarterly Journal on Studies on Alcohol, Yale, New Haven, 1945 63

61 Cal. L. Rev. 110 The Domestic Status of the Human Rights Clauses of the United Nations Charter 53,54-55,56,57

Donald M. Frame, Jr., The Complete Essays of Montaigne, Stanford U. Pr. 1965, at p. 580 62

H.R. Rep. 74th Cong. 2d Sess. (March 18, April 16, 1936) 29

H.R. Rep. Mp. 2716 Conference Report 75th Cong. 3d Sess. pp. 23-24 (June 11, 1938) 29

H.R. Rep. 10933 29

H.R. Rep. 12005 29

Norman Jolliffe, Alcohol and Nutrition: The Diseases of Chromic Alcoholism 63

Horace Freeland Judson, The Eighth Day of Creation, NY, Simon & Shuster Touchstone 1980 37

Zhores A. Medvedev, Rise and Fall of T.D. Lysenko, tr. I. Michael Lerner, NY Columbia U. Press 1969 37

Page

Michael de Montaigne, Of the Resemblance of Children to Fathers (1580) . . . 62

Ronald M. Peters, Jr., The Massachusetts Constitution of 1780, A Social Compact, Univ. of Mass. Pr. Amherst 1978 Appendix 65

S. Hr. 73 Cong. 1st Sess. at p. 239 (March 1, 1934) 22

Third Special Report to Congress on Alcohol and Health (June 1978, (HUD) 16,18,36

U.S. Department of Commerce Statistical Abstract of the United States, 100th Edition 1979 (Stat) 16

JURISDICTIONAL GROUNDS FOR REVIEW

Jurisdiction is grounded on 28 USC 1257(2) and (3). Petitioner requests consideration of the opinion of the Washington State Court of Appeals (unpublished) of February 9, 1981, 28 Wn. App. 1025 (1981) (Appendix p. A1) which became the final decision of the Washington State Supreme Court, after denial of timely motion for reconsideration on March 3, 1981 (Appendix p. A20) and after that Supreme Court denied the petition to review said decision on May 8, 1981 (Appendix p. A23). The decision terminating review became final on June 9, 1981 (Appendix p. A25), 95 Wn.2d 1021 (1981). (The case was first appealed to the Washington State Supreme Court which later transferred it to the court of appeals and then refused to grant discretionary review of the court of appeals decision.)

CONSTITUTIONAL, STATUTORY, TREATY AND ADMINISTRATIVE CODE INVOLVEMENT

Space limitations require that the following cited constitutional, legislative and administrative authorities be set out in the appendix.

UNITED STATES CONSTITUTION (Appendix p. B1 et seq.): Article 1 § 10; Article 4 § 4; Article 6 § 2; First Amendment; Ninth Amendment; Fourteenth Amendment; Eighteenth Amendment; Twenty-first Amendment.

UNITED STATES TREATIES AND INTERNATIONAL LAW (Appendix p. B5 et seq.): Declaration of Rights, World Health Organization Treaty (1948) 59 Stat. 1031, PL 643 86th Cong. 2nd Sess; Nuremberg Principles to Satisfy Moral, Ethical and Legal Concepts of Permissible Medical Experimentation, August 19, 1947 (pursuant to the Potsdam Conference, 1945).

UNITED STATES STATUTES (Appendix p. B12 et seq.): Federal Trade Commission

Act, 15 USC § 52; 15 USC § 55(a)(1), (b), (c). Federal Hazardous Substance Act, 15 USC § 1261(f), (g), (i), (k), (l), (n). Food, Drug and Cosmetic Act, 21 USC § 321(f), (g), (j), (k), (m), (n); 21 USC § 331(a), (b), (c); 21 USC § 343(a), (f); 21 USC § 352(a), (c), (f); 21 USC § 371(d). Federal Alcohol Administrative Act, 27 USC § 205. Federal Civil Rights Act, 42 USC § 1983; 42 USC § 1985. Code of Federal Regulations, 21 CFR 201.5.

WASHINGTON STATE STATUTES (Appendix p. B42 et seq.): RCW 4.92.010; RCW 4.92.090; RCW 4.96.010; RCW 9.04.050-070; RCW 9.66.010 (1), (4); RCW 36.28.010; RCW 36.28.011; RCW 66.08.010; RCW 66.08.030(2)(n), (y); RCW 66.08.100; RCW 69.04.008; RCW 69.04.009; RCW 69.04.013, RCW 69.04.015; RCW 69.04.016; RCW 69.04.040(1), (2), (3), (4), (5); RCW 69.04.250; RCW 69.04.450; RCW 69.04.470; RCW 69.04.480; RCW 69.04.500; RCW 69.04.510; RCW 69.04.530.

WASHINGTON STATE ADMINISTRATIVE CODE (Appendix p. B59 et seq.): WAC 314-16-120; WAC 314-20-100(5), (6); WAC 314-52-015(1), (8), (11), (12), (13); WAC 314-52-112(4).

STATEMENT OF THE CASE

Appellant, a recovering alcoholic who last drank alcoholic beverages on April 30, 1977, brought suit against the state for substantial damages for his physical, mental, emotional, injuries, disabilities and anguish resulting from the ingestion of alcoholic beverages sold and distributed by the State of Washington for appellant's intended use which were not accompanied by warnings of the dangers involved in such intended use and directions for avoiding such dangers. Such products are known to be inherently dangerous to a significant percentage of users (CPT 2-47, Appendix Complaint excerpts, p. C30 et seq.). Other

parts of the allegations contend that the state benefited from its acquiescence and indulgence in the general climate of publicity publicizing fanciful beneficial consequences of use while, through silence and failing to use its own legal resources, the state did little or nothing to bring home to the individual user the great hazards. The State of Washington has a monopoly on the retail sale of packaged hard liquor and strong beer and also sells wine, which it monopolized in the past to the extent of imported beverages.

Petitioner originally brought three actions and this petition involves two that were appealed. One, against the State of Washington, was brought in King County, and was dismissed for improper venue under RCW 66.08.100 requiring actions against the Washington State Liquor Control Board (not a party in the action) to be brought in Thurston County. The second action,

brought in Thurston County, was dismissed as to the State of Washington because of statutory immunity given to the Washington State Liquor Control Board and its members (all not parties to the action) under RCW 66.08.100. That suit was also dismissed as to King County for failure to state a cause of action and on the grounds of res judicata and collateral estoppel. (See appendices beginning p. A27 for oral and written rulings and orders.) Class actions and injunctions were requested in each suit.

The state was charged at the trial court levels with violating the following treaties, human rights and statutes. Petitioner charged these require the State to assume positive duties to warn in the sale of alcoholic beverages in addition to its common law duties under products liability:

1. World Health Organization Treaty Declaration of Rights (CPT 6, 7);

2. In exercise of RCW 66.08.030(y) in using alcoholic beverages for scientific studies and research, violation of those fundamental rights established as international law in scientific human experiments pursuant to the Potsdam Conference Agreement of 1945 at Nuremberg on August 19, 1947 (CPT 7, 8);

3. Violation of RCW 69.04.040(1), (2), (3), and (4) (CPT 25, 26);

4. Violation of RCW 69.04.016 (CPT 25, 26);

5. Violation of RCW 69.04.450 (CPT 26);

6. Violation of RCW 69.04.470 (CPT 26);

7. Violation of RCW 69.04.500 (CPT 27);

8. Violation of RCW 69.04.510 (CPT 27);

9. Violation of RCW 69.04.530 (CPT 27);

10. Violation of 21 USC § 331(a), (b), (c);

11. Violation of 21 USC § 343(a), (f); 21 USC §352 (a), (c), (f); 21 CFR 201.5(a),

(b), (c), (d), (e), (f) and (g) and 21 CFR 1.21 (CPT 26, 27, 28);

12. Alternatively violation of 15 USC § 1261 (CPT 29);

13. Chapter RCW 70.106 (CPT 29-30); and

14. Violation of the nuisance laws of Washington State RCW 9.66.010(1) and (4) (CPT 33).

Because of the total lack of any enforcement of the forementioned public health laws in protection of the alcoholic beverage consumer, both the State and the County were charged at the trial court level with invidious class discrimination against all alcoholic beverage consumers and those suffering from alcoholism (a subclass thereof) which invidious discrimination violates:

a. The appellant's natural rights as a human being and the rights to human

safety and dignity preserved by the Ninth Amendment to the United States Constitution (CPT 32);[1]

b. The silence violates appellant's rights to be informed under the First Amendment to the United States Constitution (CPT 182, 184);

c. The failure violates appellant's and all alcoholic beverage consumers' rights to have the public health law enforced as equally for their benefits as for the benefit of all other consumers of food, drugs, and hazardous substances in this state. This is protected by:

(i) Article I Section 10 of the United States Constitution, Nobility Clause (CPR 174) and the Fourteenth Amendment of the United States Constitution (CPT 9);

The court of appeals (Decision 2/9/81 Appendix p. A1) confirmed the trial courts'

---

[1] CPT refers to the Transcript of Clerk's Papers from Thurston County filed in the State appeal.

dismissals. It did rule in favor of petitioner on the arguments based on res judicata and collateral estoppel. It apparently found for King County on the failure to state a cause of action reasoning that neither the health protection provisions of the State or Federal Food, Drug and Cosmetic laws applied. It also ruled that prosecutorial immunity protected the County from any civil rights action. While the County had presented the immunity argument to the trial court it was one of several affirmative defenses that the trial court never ruled upon and King County did not file any cross appeal. (Oral ruling Appendix p. A67, dismissal order Appendix p. A72.) However, both the Supreme Court and the court of appeals allowed King County to make such argument upon appeal without allowing petitioner the right to rebut that argument.

Petitioner did attempt to rebut said argument by a brief allowed by the rules which the Supreme Court refused to allow petitioner to file even though petitioner at that time protested that such refusal violated petitioner's rights under the court rules and pursuant the right to petition the government guaranteed under the First Amendment of the United States Constitution.

The court of appeals, in reliance upon the case of Brown-Forman Distillers Corp. v. Matthews, (W.D. Ky. 1976), 435 F. Supp. 5 decided that the Federal Alcohol Administration Act of 1935 granted such exclusive jurisdiction over the control of the labels and advertising of alcoholic beverages that the Food and Drug Administration could not issue any regulations over the listing of contents on the labels and that none of the health measures of the food and drug laws

administered by the FDA applied to non-adulterated alcoholic beverages.

On motion for reconsideration, the court failed to answer how the state could avoid responsibility under 42 USC §§ 1983 and 1985 if it insisted upon predicating its immunity by insertion of the Washington State Liquor Control Board as the real party in interest, instead of the State.

For the first time in the case, the court of appeals discussed the common law theories of Products' Liability and relied upon the Restatement of Torts Second § 402 Ai and j. These comments assume that alcoholic beverages are only dangerous to alcoholics, or when consumed in excess or over a long period of time and that the ordinary consumer who uses the ordinary common knowledge of the community knows this, therefore; alcoholic beverages, which cannot as a product be made reasonably safe, do not have to have any warnings

accompanying them to their expected users. Facts supporting these conclusions are not found in the record. Such a presumption of willful self destruction or willful ignorance is further indication of invidious class discrimination.

The court of appeals ignored all arguments based upon Federal constitutional law, human rights under international law and the Federal Civil Rights Acts. It even ignored the arguments under the Federal Hazardous Substances Act and the State Poison Prevention Act of 1974.

ARGUMENT

THIS IS NOT A MINOR SUIT. Under Washington judicial procedure unpublished opinions, assume that the case is of no general public interest or importance and that its decision has no effect upon the common law of the state as it does not determine any new question of law, nor modify, clarify, or reverse any established

principles, State v. Fitzpatrick, 5 Wn. App. 661, 669, 491 P.2d 262 (1971). Yet this case directly effects the lives of 36% of all adults who drink alcoholic beverages and 19% of all youth from the ages of 14 through 19 (see Appendix for statistical information). This case deals with many new legal issues that the courts of Washington State, continuing a policy of invidious discrimination, are attempting to cause to disappear.

JUDICIAL DENIAL OF THE PROBLEM: The state courts consistently denied the existence of the problem as pleaded by petitioner. This is best illustrated by the court of appeals citation of the Restatement of Torts (Second) § 402 i and j as authority for denial of petitioner's common law cause grounded in products' liability. The court held that alcohol problems were caused by either excessive drinking or drinking of alcoholic

beverages over a long period of time.

However; petitioner pleaded that any alcoholic beverages, one drink, was personally dangerous (Complaint ¶ 8.030 Appendix p. C33) and so it is to petitioner and some ten million or more people in this country. Time and excess are misnomers that actually mislead the potentially damaged consumer. Petitioner suffered the common problem of believing the misinformation exemplified by the Restatement and continuing to think that there was a normal, healthy, controlled amount of alcoholic beverage that he could drink with safety. He thought there was a responsible level of alcohol consumption that was possible for all normal adults. To prove his healthy status he believed he should seek to discover the way of responsible drinking. He was but another victim of the major deception in marketing alcoholic beverages, a deception condoned or encouraged by governments

throughout this country for fiscal and taxation purposes.

We illustrate this point statistically from census data taken from the U.S. Department of Commerce Statistical Abstract of the United States, 100th Edition 1979 (hereinafter Stat) and material taken from the Third Special Report to Congress on Alcohol and Health, June 1978 (hereinafter HUD).

In 1976, in the State of Washington, the apparent consumption of ethanol in U.S. gallons per year was 2.97 gallons for each person 14 years old and older (HUD p. 3, Appendix p. C12). We do not have 1976 population figures for the State, but in 1978 the population of the state of persons 14 and over was 2,982,000 (Stat. No. 30, Appendix p. C18). Assuming a constant consumption figure (which will not greatly effect the final percentages) total consumption adds up to 8,856,540 gallons.

There are 128 ounces in a gallon, a figure to bear in mind as we look at table 4 in the appendix p. C13 that outlines percentages of daily ethanol consumption on average from 1971 to 1976. Using six year average figures: 35% did not drink any of this beverage so we may divide up the total 1,133,637,120 ounces between the remaining 65%. 32% averaged .21 or less ounces a day or less than 76.65 ounces of ethanol a year for a total of 73,142,496 ounces or 571,426 gallons of ethanol a year or less. 22% drank .99 ounces a day or less and that adds up to a population of 656,040 drinking 237,060,054 ounces or 1,852,032 gallons or less a year. That leaves 6,433,082 or more gallons a year consumed by the remaining 11%. Seventy-three percent of the ethanol consumed was consumed by 11% of the population, easily within the 36% who drink and can either be classified as problem drinkers

or having potential problems (HUD report p. xi).

In 1977, not including profits made from sales from State liquor stores, all governments in the United States made in revenues from the sale of alcoholic beverages 7,651 Million Dollars (Stat. No. 480, Appendix p. C21) and alkis paid for at least 73 percent of that, or over 4,585 Million Dollars in federal and state revenues. If for any reason these alkis could be weaned in mass from alcoholic beverages there would be massive reductions in these revenues, and a good many of the industries that depend upon them would be bankrupt or close to it.

There can be no honesty in the sale of alcoholic beverages so long as the most important item weighed in public consideration is the revenue to be derived from the addictive illness. The real question

in this case has not been the merit of the legal argument advanced, but the expendability of the lives of those troubled by alcohol problems, including perhaps over 2 million national deaths since 1950, all for the tax dollar.

We can see who lost this argument in the case of Brown-Forman Distillers Corp. v. Matthews, 435 F. Supp. 5 (W.D. Ky. 1976). That case, ruling as it did that the BATF (Bureau of Alcohol, Tobacco and Firearms) has exclusive jurisdiction over the labels on alcoholic beverages to the exclusion of the FDA (Food and Drug Administration) and the Federal Food, Drug and Cosmetic Law of 1938 clearly ignored two basic rules of statutory construction obviously applicable. The Washington Court of Appeals made the same error. In dealing with health legislation, it is subject to the most liberal interpretation for public

protection, United States v. Article of Drug, 394 U.S. 784, 793, 89 S. Ct. 1410, 22 L. Ed. 2d 626 (1966); Sutherland, Statutory Construction 3rd Ed. § 71.02 Vol. 3 p. 312. Further, statutes on the same subject matter should be construed together in a manner which gives all of their provisions meaning and effect, United States v. Zacks, 375 U.S. 59, 11 L. Ed. 2d 128, 84 S. Ct. 178 (1963); United States v. Stewart, 411 U.S. 60, 85 L. Ed. 40, 61 S. Ct. 102, rehearing denied, 311 U.S. 729, 85 L. Ed. 475, 61 S. Ct. 390; In re Young, 95 Wn.2d 216, 616 P.2d 628 (1980); 82 C.J.S. Statutes § 366.

The Food and Drug Administration, while doing nothing positive, rejects the holding of the Brown-Forman case, supra, and does not consider itself bound by it, CCH Food Drug Cosmetic Law Reports II 50.031:

> Until a definitive ruling is handed down by a higher court, the FDA maintains its position that there is concurrent jurisdiction over alcoholic beverages. The parties concede that the FDA has jurisdiction over alcoholic beverages in relation to adulteration.

The Brown-Forman case ignores the plain language of the Federal Food, Drug and Cosmetic Act, 21 USC § 371(d) (Appendix p. B30). Brown-Forman assumes that when Congress enacted the Food, Drug and Cosmetic Act, it intended no conflict of enforcement authority within the executive branch. Examination of the Senate hearings fails to support such an assumption. To examine those hearings, we note that § 301(l) of the 1938 Food, Drug and Cosmetic Act and § 12(a) of the Federal Trade Commission Act as amended on March 21, 1938 both cover advertising of new drugs and drugs are defined identically in both acts. Judge Edwin L. Davis objected strongly to such possible dual authority in the 1934

Senate hearing, and this objection was memorialized in a suggested amendment to the proposed Copeland bill that Congress did not adopt (S. Hr. 73 Cong. 1st Sess. March 1, 1934, p. 239):

> (e) The Secretary (of Agriculture) shall report to the Federal Trade Commission cases of false advertising within his knowledge and shall transmit therewith all evidences in his posession relating thereto, including all medical or scientific opinions as to the truth of the statements, claims, and representations made in the advertising reported.
>
> (f) It shall be the duty of the Federal Trade Commission upon receiving the report of the Secretary to promptly cause appropriate proceedings to be instituted to prevent the unfair trade practices or unfair methods of competition disclosed.

The following exchange between the bill's author; Dr. Royals S. Copeland, Senator from New York; Senator Arthur H. Vandenberg of Michigan and Judge Davis of the FTC amply illustrates the acceptance by members of Congress of possible dual administrative authority within the executive branch and

why Congress was not overly concerned about the problem: (p. 236):

> SENATOR VANDENBERG: Well, that is what I was trying to get at. In the case I indicated, the jurisdiction would vest with the new authority, is that correct?
>
> SENATOR COPELAND. It would.
>
> SENATOR VANDENBERG. And it would cease to exist in the Federal Trade Commission?
>
> SENATOR COPELAND. No, no. It would still be there. Their powers that they have are not affected by this bill. There is overlapping now, and the judge has already said that in the matter of labeling, and so forth, there is overlapping now between the two; but this bill is framed to protect the public health.
> . . .

p. 238 Committee on Commerce S. Hearing on S. 2800:

> JUDGE DAVIS (to Senator Copeland) Well, in other words, as I understand, your construction would be that if it appeared initially that it was only a competitive situation, that we should assume jurisdiction?
>
> SENATOR COPELAND. Yes, sir.
>
> JUDGE DAVIS. And the Food and Drug Administration should not?

SENATOR COPELAND. Yes, sir.

JUDGE DAVIS. And on the other hand, if it appeared that it involved the question of therapeutic value of the drug or cosmetic or the potency of the food as a food, that we should not make a distinction but the other should.

SENATOR COPELAND. That is my position.

JUDGE DAVIS. Well now, suppose we get into the case, as frequently happens, what is first indicated does not develop, or both situations develop, as they sometimes do. Don't you think that is calculated to create considerable confusion?

SENATOR COPELAND. Oh, you are both under the President. I would trust him to get you together.

If the Federal Alcohol Administration Act were meant to supersede any such regulation under the FDA then why can no repealer of the FDA's authority as it existed in 1935 be found in the act? How could an act of Congress passed in 1935 supersede acts of Congress passed in 1938. It's logically impossible.

One of the features of the 1906 Food and Drug Act 21 USC §§ 1-15, was to regulate alcoholic beverage labels which we know it continued to do that at least until 1934 as this exhibit taken from page 774 of the report of hearings of the House Committee on Interstate Commerce to amend the Food and Drug Act 74th Cong. 1st sess.:

774 FOODS, DRUGS, AND COSMETICS

A

B

> Under the Food and Drugs Act of 1906 statements on the labels of foods and beverages cannot be false and misleading. On the other hand, they are not required to tell enough of the truth to be informative.
>
> The liquor sold under label A was not whisky as represented, but a distillate from grape residues and raisins which had been stored in charred wood. When several shipments were seized, the manufacturer had to stop using the false statements in label A, but he could not be compelled to add the information in label B, which would let the consumer know what he was buying.

Where did Congress repeal this authority in 1935? Unless a repealer can be shown, then the report of the House Committee on Interstate and Foreign Commerce (April 14, 1938, No. 2139 75th Cong. 3rd Sess.) tells us this authority over labels continued:

> The measure contains substantially all the features of the old law that have proved valuable in promoting honesty and fair dealing. But it amplifies and strengthens the provisions designed to safeguard the public health and prevent deception, and it extends the scope of the law to include cosmetics, therapeutic devices, and certain drugs that now escape regulation.

J. H. Choate, Jr., chairman of the Federal Alcohol Control Administration, did try to prevent the inclusion of alcoholic beverages within the provisions of the Food, Drug and Cosmetic bills under consideration in the House. Representative William I. Sirovich attempted to accommodate him through introduction of his own bill (H.R. 8805) that covered only "non-alcoholic and nonintoxicating beverages". Why is explained on page 740 of the House Interstate and Foreign Commerce Hearings, August 12, 1935:

> MR. KENNEY. I notice in the bill you exclude intoxicating beverages.
>
> DR. SIROVICH. Yes.
>
> MR. KENNEY. The Copeland bill deals with intoxicating beverages.
>
> DR. SIROVICH. I will tell you why I excluded them, because at the time I wrote my bill I meant to include intoxicating beverages. So I went over to see Commissioner Choate, who had been in office for a few months and I spoke to him about including

> in my bill intoxicating beverages, which need regulation to a very great extent, and he pleaded with me and begged me to leave it alone, that the Ways and Means Committee would bring out some bill that would have labeling and other things in there which they would be able to regulate for their own intoxicating beverages and for that reason I omitted it. I only put in nonintoxicating and nonalcoholic beverages which need tremendous regulation.

Neither the House or the Senate followed Dr. Sirovich's suggestion as the words nonalcoholic and nonintoxicating are not to be found in the Food, Drug and Cosmetic Act.

The discussion between Congressman Chapman and Dr. McCormak, State Health Commissioner for Kentucky cited in the Brown-Forman decision, 435 F. Supp. at 10, did not concern the whole field of alcoholic beverages. It concerned only an amendment to the Copeland bill proposed in the House to cover "whisky" distilled from a source other than grain. The

amendment was rejected in the House-Senate conference (H.R. Rep. Mp. 2716 Conference Report June 11, 1938, 75th Cong. 3d Sess. pp. 23-24). The attempt was also being made in H.R. Rep. 10933 and H.R. Rep. 12005 Making it Unlawful to Sell Certain Spirits Containing Alcohol Produced from Material Other than Cereal Grains, etc. and can be studied in the Hearings held before Subcommittee No. II of the Committee on the Judiciary, H. R. Rep. 74th Cong. 2d Sess., of March 18 and April 16, 1936 (after the Federal Alcohol Control Act has passed).

Both the State court and the Brown-Forman court overlooked a basic premise of statutory construction, 3 Sutherland, Statutory Construction, 3d Ed. § 71.02, p. 312.

> The steady advancement and progress of medical science has given stimulas to extensive federal, state and local legislation. Today, more than ever, the value of preventive

> medicine has made itself known, and has become and promises to continue to be an increasingly more important field of statutory control. Since a very early time the courts have been committed to the doctrine of giving statutes which are enacted for the protection and preservation of public health an extremely liberal construction for the accomplishment and maximization of their beneficent objectives.

Brown-Forman's position is in conflict with the United States Supreme Court in United States v. An Article of Drug, 394 U.S. 784, 22 L. Ed. 2d 726, 89 S. Ct. 1410 (1966):

> Strong indications from legislative history that Congress intended the broad coverage the District Court thought "ridiculous" should satisfy us that the lower courts erred in refusing to apply the Act's language as written. But we are all the more convinced that we must give effect to congressional intent in view of the well-accepted principal that remedial legislation, such as the Food, Drug, and Cosmetic Act is to be given a liberal construction consistent with the Act's overriding purpose to protect the public health, and specifically, . . . to insure that . . . products marketed to serve the public serve the public with "efficacy" and "safety". [Cases cited].

Application of the Hyperbolic Dicta of the Restatement of Torts (Second) § 402A, Comments i and j, for Fact Finding Legal Conclusions is Invidious Discrimination

We fail to see the qualification of a panel of lawyers, judges and law school teachers to make fact finding assumptions on what is common knowledge about alcoholic beverage consumption that carries such force of law so as to deny petitioner's right to allege contrary factual conclusions. The 1966 Restatement's findings of alcoholic beverages not having dangers supportive of action under any theory of products' liability directly controverts the otherwise unchallenged allegations of the complaint in this case, see generally ¶¶ 1.020, 1.030, 5.050, 6.032, 8.040, 9.010, 9.020, and 9.030 of the complaint (Appendix p. C30). Evidence of the factual conclusions drawn by the court of appeals was not presented to the trial court and could not have been the basis for the

dismissal upon summary judgment. The Restatement comment is interjected by the court of appeals for the first time.

The State court's action in accepting the Restatement as against the allegations of appellant is even contrary to its rule that the court must consider material evidence and all reasonable inferences therefrom most favorably for the nonmoving party, where reasonable people might reach different conclusions, Jacobsen v. State, 89 Wn.2d 104, 569 P.2d 1152 (1977).

The Restatement's factual conclusions cannot be adopted by the State courts as binding as they are compiled outside of the normal channels of constitutional, legislative, executive or judicial control and violate article IV, § 4 of the United States Constitution wherein we are guaranteed a republican form of government, Van Sickle v. Shanahan, 212

Kan. 426, 511 P.2d 223 (1973). Were the conclusions reached by the Restatement considered as legislative determinations, they would violate the equal protection clause of the fourteenth amendment of the United States Constitution, Carrington v. Rash, 380 U.S. 89, 85 S. Ct. 775, 13 L. Ed. 2d 675, on remand, 389 S.W.2d 945 (Texas 1965); Avery v. Midland County, Texas, 390 U.S. 474, 20 L. Ed. 2d 45, 88 S. Ct. 1114, on remand, 430 S.W.2d 487 (Texas 1968).

The presumptions concerning alcoholic beverage used by the Restatement are entirely arbitrary and capricious, without any forum foundation, the product of backroom speculation, creating invidious discrimination and depriving appellant of a reasonable opportunity to be heard, violating both the equal protection clauses and the due process clauses of the United States Constitution, Bandini Petroleum Co.

v. Superior Court of State of California, 284 U.S. 639, 76 L. Ed. 136, 52 S. Ct. 103 (1931); Western A.R.R. v. Henderson, 279 U.S. 639, 73 L. Ed. 2d 884, 49 S. Ct. 445 (1929); Coleman v. Darden, 595 F.2d 533 (C.A. Colo. 1979); Davis v. Bucher, 451 F. Supp. 791 (D.C. Pa. 1978). Reliance on the Restatement's findings discloses that the State court totally ignored contrary evidence before it in the report on alcohol use in pp. i-xxiv and 1-98 of the appendix of the Brief of Appellant.

The Restatement says the dangers of excessive drinking are generally known and recognized. Yet the Third Special Report to Congress (1978) says at p. 12:

> Approximately 63 to 69 percent of each survey sample believed that sometimes or usually "drunkenness is a sign of just having fun."

The Restatement says that the ordinary consumer with ordinary knowledge known to the community knows the dangers of alcohol

consumption, yet the report says at 36:

> Researchers hope that many acute, measurable biochemical and physiologic changes caused by alcohol injestion eventually will form the basis for diagnostic tests for alcoholism. Unfortunately, most diagnostic tests now known are based on secondary effects, lack specificity, and depend on circumstantial evidence. The most specific tests measure changes that occur in only 15 to 20 percent of alcoholics, while the greatest need is for tests to diagnose the disease before it reaches its late stage.

Even hereditary factors fail to provide such knowledge of predisposition to alcohol problems, report at 59:

> Assessing the relative importance of hereditary and environment is difficult. Although studies suggest the genetic factors are involved, they provide no details on how a predisposition to alcoholism is transmitted.

That report concludes, based upon significant and large scale scientific samples and studies, that, at xxii:

> It is wrong and socially destructive not to warn social drinkers of the potential risks in the misuse of alcohol. And it is also wrong, indeed cruel, to wait until someone

> becomes hopelessly ill before offering assistance. The progressive drift from social drinking to the misuse of alcohol and alcoholism often occurs because people are uninformed about alcohol and its potential consequences for their personal well-being.

(Third Special Report to U.S. Congress on Alcohol and Health, June, 1978, Ernest P. Noble, Ph.D., M.D., Editor, prepared under the auspices of the U.S. Department of Health, Education and Welfare.)

The dangers of alcohol use and lack of public knowledge have been recognized in the Congress. Representative George E. Brown said on April 19, 1977, Cong. Rec. E2240 Extensions of Remarks:

> Reaction to alcohol consumption is an individual response and is unpredictable beforehand. Thus, a person purchases and consumes alcohol assuming that there will be no serious consequences and may find out too late that he or she is in some way unable to control the rate of consumption of alcoholic beverages. Alcohol advertising presents the "pleasant" uses of alcohol and gives no inkling of the possible tragic consequences that await some people who through some still

> unknown combination of circumstances have a predisposition toward alcohol abuse.

The Restatement's hypothesis of an inherited form of community consciousness about alcoholism appears to be a resurrection of the thoroughly discredited scientific views of Lamark and more recently, Stalin's geneticist, Trofim Denisovich Lysenko, who held that living creatures so interact with their environment that characteristics they acquire in their lifetime, such as Jew's supposed intellectualism or the esoteric collective unconscious postulated by Carl Jung, can be inherited by their offspring. (Zhores A. Medvedev, Rise and Fall of T.D. Lysenko, tr. I. Michael Lerner, NY Columbia U. Press 1969, Horace Freeland Judson, The Eighth Day of Creation, NY, Simon and Shuster Touchstone 1980, at 370). Is that theory the explanation for the existence of this remarkable common community knowledge

concerning alcoholism? Existing education in the area is woefully inadequate and misinformed. In fact many people could never drink any alcoholic beverages "responsibly" and that is generally unknown.

In § 6.048 of the complaint appellant accused the state of culpability in advertising of alcoholic beverages in violation of the terms of RCW 69.04.016. RCW 69.01.160 says that the State Food, Drug and Cosmetic Act should also be construed in accordance with the Federal Trade Commission Act, that contains the exact same definitions of foods, drugs, and cosmetics as the Federal Food, Drug and Cosmetic Act and applies to advertising with at least the same width as RCW 69.04.016. The state, in effect, also holds that the BATF has exclusive jurisdiction over all alcoholic beverage advertising to the exclusion of any claimed by the

Federal Trade Commission under 15 USC §§ 52, 55.

The State court omitted any discussion of the Federal allegations of invidious discrimination in the scheme of alcoholic beverage consumer protection as opposed to the protection of all other food and drug consumers in the state. Discrimination under the World Health Organization Treaty was not discussed, even though this 1948 treaty mandates clear rights in the appellant, 59 Stat. 1031, (Appendix p. B5).

The action of the State courts of ignoring the Federal questions clearly violates article VI, cl. 2 of the United States Constitution. United States v. Conroy, 589 F.2d 1268 (5th Cir. 1979), rehearing denied, 594 F.2d 241, certiorari denied, 444 U.S. 831, 62 L. Ed. 2d 40, 100 S. Ct. 60; Garner v. Teamsters, Chaffeurs & Helpers Local Union

No. 776, 346 U.S. 485, 98 L. Ed. 228, 74 S. Ct. 161 (1953); Testa v. Katt, 330 U.S. 386, 91 L. Ed. 967, 67 S. Ct. 810, 172 A.L.R. 225 (1947); Smith v. O'Grady, 312 U.S. 329, 85 L. Ed. 859, 61 S. Ct. 572 (1941); Iowa Motor Vehicle Ass'n v. Board of Railroad Commissioners, 207 Iowa 461, 221 N.W. 364 (1928), affirmed, 280 U.S. 529, 74 L. Ed. 595, 50 S. Ct. 151. No state or Federal court may serve as an accomplice in the willful transgression of Federal laws by which judges in every state are bound. Lee v. State of Florida, 392 U.S. 378, 20 L. Ed. 2d 1166, 88 S. Ct. 2096 (1968). The states cannot vest their courts with the power to violate or ignore the supreme law of the land, Kalb v. Feverstein, 308 U.S. 433, 84 L. Ed. 370, 60 S. Ct. 343 (1940), 41 Am. Bankr. Rep. N.S. 501; Machesky v. Bizzel, 414 F.2d 283 (5th Cir. 1969); Grand Canyon Airlines Inc. v. Arizona

Aviation Inc., 12 Ariz. App. 252, 469 P.2d 486 (1970); Ritchie v. Johnson, 158 Kan. 103, 144 P.2d 925 (1944). Federal questions are involved here, California Liquor Dealers v. Midcal Aluminum, 445 U.S. 97, 63 L. Ed 2d 235, 100 S. Ct. 937 (1980).

Clearly, the Court's use of the Restatement as indicative of the rights of any alcoholic or those who may be damaged by the consumption of alcoholic beverages, relegates all such persons to a lower order of humanity and is a denial of the rights mandated above. It is a clear statement of the State's policy in violation of the World Health Organization's Declaration of Rights mandate and is invidious discrimination of the alcoholic beverage consumer in violation of the fourteenth amendment to the U.S. Constitution. This also denies the appellant and all those who are similarly situated their fundamental rights to be informed as

guaranteed by the speech and press freedoms of the first amendment.

Furthermore, this special protection showered by governmentally granted legal privileges of exemption from the law to some favored politicians violates the prohibitions of grants of special privilege under article I, § 10 of the U.S. Constitution prohibiting grants of titles of nobility. The only extensive authority on the nobility clause and immunity and privilege is in the brief the State refused to file officially (it is part of the record) and the index thereto is in the Appendix p. C2.

The court did not deal with appellant's points on the violations of the Nuremberg Code, nor the ninth amendment to the U.S. Constitution, nor the alternative violations of 15 USC § 1261. Nor did the court really deal with the County's violation of 42 USC §§ 1983 and 1985 concerning

discrimination in actions for nuisance.

Who Are the Defendants in This Case?

The prosecutor is not the defendant, the County is. Other County officers have duties which have not been performed under these allegations such as the sheriff under RCW 36.28.010(1) and RCW 36.28.011.

The sheriff has no discretion in complying with the mandate of this statute, State v. Twitchell, 61 Wn.2d 403, 378 P.2d 494 (1963).

The immunity argument also fails to address the fact that much of the suit against the County is grounded on violation of 42 USC §§ 1983 and 1985. The case of Owen v. City of Independence, 445 U.S. 622, 63 L. Ed. 2d 673, 100 S. Ct. 1398 (April 16, 1980) among other things holds:

> But there is no tradition of immunity for municipal corporations, and neither history nor policy support a construction of § 1983 that would justify the qualified immunity accorded the city of Independence by the Court of Appeals.

> We hold, therefore, that the municipality may not assert the good faith of its officer or agents as a defense to liability under § 1983 (18).
>
> Note (18) The governmental immunity at issue in the present case differs significantly from the official immunities involved in our previous decisions. In those cases, various government officers had been sued in their individual capactieis, and the immunity served to insulate them from personal liability for damages. Here, in contrast, only the liability of the municipality itself is at issue, not that of its officers, and in the absence of an immunity, and recovery would come from public funds.

How Does the County Discriminate

The County Prosecutor has the authority to prosecute the misdemeanors in his county and under RCW 69.04.060 and the acts enumerated in RCW 69.04.040 are misdemeanors.

The prosecutor has wide freedom in choosing whether to prosecute individual crimes, but where he and the county consistently overlook entire areas of crime and rights under public health law

concerning definite identifiable segments of the population, this can be invidious discrimination. Civil rights actions would lie, for example, against the City of Seattle, if it consistently refused to send health inspectors into a minority racial area, or provide police protection to that area.

Because of the misbranding and deceptive advertising of alcoholic beverages the County Prosecutor could also proceed under RCW 9.04.060 to restrain all persons publishing, disseminating, or displaying such false advertisement (RCW 9.04.050).

Nor does the County Prosecutor run out of ammunition for protecting the alcohol beverage consumer after that statute. RCW 9.66.010 declares that "A public nuisance is a crime against the order and economy of the state" and provides the public prosecutor with a number of criminal remedies for illegal sale of alcoholic beverages.

The sheriff is capable of initiating the proceedings and has the duty to do so. It has never been done.

State Has No Immunity From Tortious Conduct

Article 11, § 26 of Washington State Constitution states:

> The legislature shall direct by law, in what manner, and in what courts, suits may be brought against the state.

Pursuant to this constitutional provision the State legislature enacted RCW 4.92.010 providing where the state is to be sued. RCW 4.92.090 provides for suit against the state for tortious conduct. RCW 4.96.010 provides for abolition of immunity for all political subdivisions of the state. A leading state case on the question of governmental liability for tortious conduct is Evangelical United Brethren Church of Adna v. State, 67 Wn.2d 246, 207 P.2d 440 (1965) at 252 (The Green Hill School Case):

> There can be no question but that by enactment of Laws of 1961, ch. 136 § 1 (RCW 4.92.090) the legislature intended to abolish on a broad basis the doctrine of sovereign tort immunity in this state, and we have so held in Kelso vs. Tacoma, 63 Wn.2d 913, 390 P.2d 2 (1964) and Hosea v. Seattle, 64 Wn.2d 678, 393 P.2d 967 (1964).

However, the court went on to observe that:

> the statute does not render the state liable for every harm that may flow from governmental action, or constitute the state a surety for every governmental enterprise involving an element of risk. Negligent conduct, within accepted tort concepts must be present.

The Washington State Liquor Control Board (WSLCB) had adopted advertising regulation that if complied with might have obviated this suit under WAC 314-52-015 dealing with false and misleading statements. Certainly misbranding as described under the food and drug laws is false or misleading in many material particulars.

The Board cannot say it has not considered health problems because it also prohibits (WAC 314-52-015(8)) advertising theraputic effects of liquor.

A basic governmental doctrine has been established and directs the action of the Washington State Liquor Control Board. It directs that information given to the public concerning alcoholic beverages is "for the protection of the welfare, health, peace, morals, and safety of the people of the state." (RCW 66.08.010) The Board is required to give such information.

The State never alleged that the Liquor Control Board ever considered the policy of products liability warning of health hazards in any fashion as outlined by the complaint and the case, statutory, constitutional and treaty laws alleged therein, nor has that board ever balanced the risks and advantages of the application of these laws. The State cannot claim a

discretionary function not exercised. In fact, the Alcohol Beverage Control Act directs the WSLCB to examine the pharmaceutical application of alcohol beverages and set forth standards of prescriptions, RCW 66.08.030(2), (7) which it has never done.

It is clear that because labeling and advertising standards covering precise health warnings are operational, ministerial or housekeeping functions as opposed to any policy decisions embracing the exercise of purely executive or administrative discretion, governmental immunity in this case is unacceptable.

Board and Member Immunity is Distinguishable from State Liability

The State courts interposed RCW 66.08.100 in its limitation of liability of the Board and Board Members as a complete bar to the liability of the state. The liabilities of the State of Washington and its agents are clearly recognized as separate by the

state, King v. Seattle, 84 Wn.2d 239, 243, 525 P.2d 228 (1974).

Fundamental Legal Principles

Alcohol, as an intoxicating liquor, is the only chemical compound covered specifically by the United States Constitution. Its sale was prohibited by the eighteenth amendment which was repealed by the twenty-first amendment subject to the right of every state to regulate its transportation and importation for delivery or use in each state. Neither of these amendments changed the nature or chemical composition of alcoholic beverages, nor altered their physical effects on the human body. These amendments neither improved or removed the human consequences of drinking alcoholic beverages.

Under the Declaration of Rights of the World Health Organization Treaty the appellant and all humans in the United

States are entitled to an environmentally healthy society. That is a fundamental right and the state has no right to pollute that environment by failure or refusal to enforce laws on the books designed for public health.

This statement is true because treaties are part of the supreme law of the land, United States Constitution article VI, § 2, Kennett v. Chambers, 55 U.S. 38, 14 L. Ed. 316 (1852); Hauenstein v. Lyhham, 100 U.S. 483, 25 L. Ed. 628 (1880). A close example is the United Nations Charter which is classified as a treaty and thus becomes binding upon the judiciary of federal and state governments. Sei Fujnii v. State, 38 Cal. 2d 718, 242 P.2d 617 (1952).

The only restriction imposed upon the operation of the WHO treaty in the United States was the specific restriction of Public Law 643 [86th Cong., 2d Sess.

Ch. 469, June 14, 1948, 62 Stat. 441] being the Joint Resolution "Providing for membership and participation by the United States in the World Health Organization and authorizing an apapropriation therefor. . . ." Section 5 reads:

> In adopting this joint resolution, the Congress does so with the understanding that nothing in the Constitution of the World Health Organization in any manner commits the United States to enact any specific legislative program regarding any matters referred to in said Constitution.

(Emphasis added.)

Congress in 1948 realized that the World Health Organization Chapter required affirmative compliance with specific legal principles. Furthermore, Congress did not restrict existing law from being applied in conformance with the new enumerated rights, nor did it say that it reserved the right to enact new law in contravention of those individual human rights enumerated by the treaty. Congress

did not restrict the courts' use of these legal principles in interpreting the rights of people and the responsibilities of government. While the courts might not force Congress to pass any new laws, the courts can not limit the application of these fundamental health laws as domestic situations require. They are under the same obligation as all other representative branches of the United States, to positively apply these principles and enforce these rights to the full extent possible under existing laws.

This case demands that the courts apply these fundamental principles both directly and indirectly. By directly we refer to such judicial action as illustrated in the analysis of Bernhard Schluter expressed in his article "The Domestic Status of the Human Rights Clauses of the United Nations Charter", California Law Review 61:110 (1973). At p. 153, Mr.

Schluter, observes about direct application of the human rights clauses in the United Nations Charter:

> The clauses serve as a standard against which the courts may measure the legality of state behavior affecting individuals. Whenever the courts are competent to review acts of public authorities, they may have to strike down those acts that infringe upon fundamental freedoms protected by the Charter. This may require injunctions against public authorities at all levels, federal as well as state, reversals of lower judgments, nullification of administrative and even legislative acts, and similar judicial controls of state behavior.

Obviously injunctive relief as prayed for under the nuisance law violation is a form of direct application of the treaty. The tort theories of damages would fall into the indirect category as explained by Mr. Schluter, 61 Cal. L. Rev. at 153:

> The interpretive function exercised by the human rights clauses in the process of judicial decision making can be characterized as indirect application. The clauses may guide the courts in the specification of domestic rules of law governing, among other things, contractual and

> tort relationships between private parties. Hence certain contracts which discriminate on proscribed grounds among individuals may be declared void and unenforceable, and certain forms of discriminating behavior may lead to tort liability.

RCW 4.92.090 provides the means to implement indirect application of the WHO Treaty rights by the provision that the State of Washington "shall be liable for damages arising out of its tortious conduct . . ."

Because means exist to further the obligations enumerated in the WHO Charter without recourse to further legislation, the courts shall act upon those principles: People of Saipan v. United States Department of Interior, 502 F.2d 90 (9th Cir. 1974). Even if there was no available legislation for implementation, because these treaties prescribe rights and obligations of individuals they may still be judicially enforced: Bacardi Corp. v. Domenech, 331 U.S. 150, 61 S. Ct. 219, 85

L. Ed. 98 (1940); Asakaura v. City of Seattle, 265 U.S. 332, 44 S. Ct. 515, 618 L. Ed. 1941 (1923).

The antidiscrimination feature of the World Health Organization Treaty Declaration of Rights parallels those same features of the United States Constitution article I, §§ 9 and 10 concerning titles of nobility, and the fourteenth amendment equal protection, and the Federal Civil Rights Acts under 42 USC §§ 1983 and 1985. What Schluter points out about the human rights provision of the United Nations Charter is equally applicable to these fundamental nondiscriminatory explicit rights to health:

> Moreover, the concept of human rights is not an entirely new invention by the framers of the Charter. It has a core of meaning provided by a continuously developing body of general principles recognized by civilized nations and by international customary law.

61 Cal. L. Rev. at 123, supra.

> The right to nondiscrimination . . . can reasonably be considered a fundamental human right that is itself recognized under international customary law and the vast majority of national constitutions, . . .

Schluter, supra, 61 Cal. L. Rev. 147.

In applying the fundamental rights to health we have the federal constitution and federal and state statutes as well as judicial procedure to "guide the courts in dealing with the human rights provisions." (61 Cal. L. Rev. at 141, supra.)

We have alleged that the state, and more especially for the Civil Rights Acts, the county, have followed concerted programs not to apply the public health laws to the sale of alcoholic beverages. The manner of silence in which each acts, by its totality, amounts to invidious discrimination against the alcoholic beverages consumer, a distinct social group.

Failure to furnish police protection on proper occasions and failure by inaction to discharge official duties can constitute a denial of equal protection of the law. United States v. Lynch, 94 F. Supp. 1011, aff'd., 189 F.2d 476 (5th Cir. 1951), cert. den., 342 U.S. 831, 72 S. Ct. 50, 96 L. Ed. 629; United States v. Klans, Knights of the KKK, 194 F. Supp. 897 (D.C. Ala. 1961); United States v. Grimes, 229 F. Supp. 289 (D.C. Ga. 1964). The state has no right to blanketly refuse protection under public health laws to all alcoholic beverage consumers.

The state's refusal to extend to the alcoholic beverage consumer the protection and benefits of the laws designed to protect public health runs straight into the teeth of the fourteenth amendment of the United States Constitution. King County's refusal and complete failure to offer police protection in these areas

violates the same premises as well as the Civil Rights Acts 42 USC § 1983 and 42 USC § 1985. The same conclusion may be reached based on the fundamental rights to health guaranteed by the WHO Charter. The Oregon Supreme Court developed such a principle in the case of Namba v. McCourt, 185 Ore. 579, 204 P.2d 569 (1949). See also concurring opinions in cases of Peres v. Lippolf, 32 Cal. 2d 711, 732-33, 198 P.2d 17, 29-30 (1948) and Oyama v. California, 332 U.S. 633, 68 S. Ct. 269, 92 L. Ed. (1948). When a statute, such as the Food and Drug Acts, confers a benefit, it must be available to all equally and to withhold that benefit from one class while granting it to another is invidious discrimination intolerable under the fourteenth amendment, LeDent v. Wolff, 334 F. Supp. 64 (D.C. Neb. 1971), vacated on other grounds, 460 F.2d 1001.

First Amendment Protection

The state has set up areas of consumer

law that entitle the consumer to information. The right to information is protected by the first amendment.

> [T]he Constitution protects the right to receive information and ideas. . . . This right to receive information and ideas, regardless of social worth [citations omitted] is fundamental to our free society.

Stanley v. Georgia, 294 U.S. 557, 22 L. Ed. 2d 542, 89 S. Ct. 1243 (1969).

The idea that people have rights to receive information that are protected by the first amendment is certainly not new:

> It is the right of the public to receive suitable access to social, political, esthetic, moral and other ideals and experiences which is crucial here.

Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 390, 23 L. Ed. 2d 371, 89 S. Ct. 1794 (1969). "Those guarantees are not for the benefit of the press so much as for the benefit of all of us". Time, Inc.

v. Hill, 385 U.S. 374, 389, 17 L. Ed. 2d 456, 87 S. Ct. 534 (1967).

> The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read. . . .

Griswold v. Connecticut 381 U.S. 479, 482, 14 L. Ed. 2d 510, 85 S. Ct. 1678 (1965).

> I think the right to receive publications is such a fundamental right. The dissemination of ideas can accomplish nothing if otherwise willing addresses are not free to receive and consider them.

Lamont v. Postmaster General, 381 U.S. 301, 308, 14 L. Ed. 2d 398, 85 S. Ct. 1493 (1965) (Brennan, J. concurring)

> This freedom [the First Amendment] embraces the right to distribute literature [citations omitted] and necessarily protects the right to receive it.

Martin v. Struthers, 319 U.S. 141, 143, 87 L. Ed. 1313, 63 S. Ct. 862 (1943).

State agencies have no right to classify the alcohol consumer as excluded from the right to receive information

furnished to consumers of all other food and drugs.

THE BASIC THRUST OF PROTECTION

> Health is a precious thing, and the only one, in truth, which deserves that we employ in its pursuit not only time, sweat, trouble, and worldly goods, but even life; inasmuch as without it life comes to be painful and oppressive to us. Pleasure, wisdom, knowledge, and virtue, without it, grow tarnished and vanish away; . . .

Michel de Montaigne, Of the Resemblance of Children to Fathers (1580) Donald M. Frame, Jr., The Complete Essays of Montaigne, Stanford U. Pr. 1965, at p. 580.

By the summer of 1945, when petitioner was still seven years old, alcohol had become scientifically known as a cause of vitamin B deficiencies and B deficiency diseases; beriberi, pellagra, polyneuropathy, eucephalopathy, Wernicke's syndrome, and also as a cause of Laenec's cirrhosis. In fact, two chemists of Seagram laboratories had already experimented in keeping

quantities of B vitamins in whiskey. Thiamin and niacin did well but not riboflavin. Alcohol Science and Society, Quarterly Journal on Studies on Alcohol, Yale, New Haven, 1945, at p. 17. See Norman Jolliffe, "Alcohol and Nutrition: The Diseases of Chronic Alcoholism", at p. 71, et. seq.

This suit threatens to expose health hazards that have been known in the trade but hidden from the public for decades.

Instead of attacking the alcoholic beverage industry on behalf of "society" or "religion" or "the family" or "the children" or all the other hypothetical injured, this action has thrown a punch for the real victim, the alcohol user. This requires viewing the whole field of law from an entirely different perspective, from the theories grounded in ancient common law

tort, from conservative theories fundamentally interwoven with the basic fibre of our judicial system.

Instead of dictating how others should live their lives, through mandatory prohibition, incarceration, institutionalization and welfare, this action demands the right to live our own lives free of ignorance perpetuated through government inaction and neglect of its own basic health laws.

We should recall the challenge and purposes of our oldest living constitution:

> The end of the institution, maintenance and administration of government, is to secure the existence of the body-politic; to protect it; and to furnish the individuals who compose it, with the power of enjoying, in safety and tranquility their natural rights, and the blessings of life . . .

Ronald M. Peters, Jr., The Massachusetts Constitution of 1780, A Social Compact, Univ. of Mass. Pr. Amherst 1978 Appendix.

Respectfully submitted,

Edward D. Campbell
Pro se

APPENDIX A

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON

EDWARD D. CAMPBELL, Appellant,	No. 8885-8-I
v.	DIVISION ONE
STATE OF WASHINGTON and KING COUNTY, Respondents.	FILED: Feb 9, 1981

CALLOW, J.--The plaintiff, Edward D. Campbell, filed suit against the State of Washington and King County, seeking damages and injunctive relief. The Claims presented all derive from the absence of warning labels on alcoholic beverages. The trial courts in King and Thurston County dismissed Campbell's complaints. The appeals have been consolidated.

Campbell's first complaint was filed in King County and numbered 852565. The named defendants included the State of Washington, the Washington State Liquor Board, and King County. This suit was dismissed.

The plaintiff later filed a similar suit, King County cause No. 855608, naming as defendants only the State of Washington and the King County courts. This suit was also dismissed. Separate orders were entered dismissing the King County courts and the State of Washington. The order dismissing King County recites that "plaintiff has failed to state a claim upon which relief may be granted . . ." The order dismissing the complaint as to the State of Washington recites that the complaint is "dismissed without prejudice as to defendant State of Washington for failure to state a claim upon which relief can be granted because of lack of jurisdiction in King County".

Campbell then filed the same complaint, with minor modifications, in Thurston County, cause No. 79-2-00249-3. This third complaint named as defendants the State of Washington and King County.

The State of Washington and King County were also dismissed from this third suit--by separate orders. The order as to King County recites.

> Plaintiff has failed to state a claim upon which relief may be granted, and it further appearing that plaintiff's claim is barred by reason of the doctrines of res judicata and collateral estoppel stemming from orders of dismissal entered in King County Superior Court cause Nos. 852565 and 855608 . . .

The order as to the State of Washington recites:

> The Court hereby finds that there exists no issue of material fact herein and that defendant State of Washington is entitled to a summary judgment in its favor as a matter of law for the reason that the complaint fails to state a claim against defendant State of Washington upon which relief can be granted by virtue of RCW 66.08.100 and chapter 70.96A RCW and that the subject matter of the claim for relief against defendant State of Washington are matters which are withint the realm of the legislature, rather than being justicable within the judicial branch.
>
> The parties agree as to the facts.

The State and King County concede that

alcoholic beverages are sold without warning labels.

The appellant Campbell appeals the entry of the four orders entered by the trial courts of King and Thurston Counties.

1. The order dismissing the King County courts in King County cause No. 855608.

Paragraph 11.013 of defendant's complaint in that cause of action states:

> The secondary public defendants are the Superior Court of King County, the Northeast District Justice Court of King County and the Shoreline District Justice Court where injunctive relief is prayed for dismissal of particular driving charges.

The sole relief sought against the King County Superior Court in this action was injunctive relief concerning certain driving charges brought against the plaintiff. The plaintiff has abandoned his appeal from this order of dismissal.

2. The order dismissing the State of Washington in King County cause No. 855608.

The plaintiff argues that RCW 4.92.010 grants the superior courts jurisdiction

to hear claims sounding in tort against the State of Washington. He asserts that this statute also provides that venue is laid in King County and that therefore, the superior court erred in dismissing the claim because of lack of jurisdiction.

The State argues that RCW 66.08.100 places the venue to hear cases against the Washington State Liquor Control Board or any member thereof in Thurston County. It argues that the failure to name a state agency as a party does not change the true nature of the lawsuit. Centralia College Educ. Ass'n v. Board of Trustees, 82 Wn.2d 128, 508 P.2d 1357 (1973). The State asserts that Campbell's failure to name the Washington State Liquor Control Board in King Countycause No. 855608 is immaterial because the Liquor Control Board is the only statutory agency empowered to regulate the sale of alcoholic beverages citing RCW 66.08.020.

The legislature's enactment of RCW 4.92.010 did not impliedly overrule RCW 66.08.100. See Sim v. Parks & Recreation, 90 Wn.2d 378, 583 P.2d 1193 (1978). Therefore, the King County Superior Court correctly concluded that jurisdiction over this cause of action did not lie in King County.

3. The order dismissing King County in Thurston County cause No. 79-2-00249-3.

The issue posed under the dismissal of this action is whether the doctrines of res judicata and collateral estoppel properly apply. The plaintiff asserts that the first King County cause of action was dismissed without prejudice. He further asserts that the second King County cause of action did not name King County as a defendant, and the Thurston County complaint added allegations which invidiously discriminate against the class composed of alcoholic beverage consumers. Finally, the plaintiff states that the King

County causes were dismissed because they sought an improper remedy. It is the plaintiff's position that res judicata is not available as a bar in such situations citing 46 Am. Jur. 2d Judgments § 498 (1969).

The County posits that res judicata and collateral estoppel both prevent retrial of actions or issues that have already been determined. See 2 L. Orland, Wash. Prac § 359-60 (1972). King County argues that orders granting a motion to dismiss are treated as final judgments on the merits where the dismissal is granted for failure to state a claim citing 2 Orland, Wash. Prac. § 367 (1972); Metropolitan Life Ins. Co. v. Davis, 2 Wn. 2d 155, 97 P.2d 686 (1940); Carter v. Money Tree Co., 532 F.2d 113 (8th Cir. 1976). The County states that all three complaints are substantially identical and that although the Thurston County complaint does alleged

invidious discrimination based on acts bythe King County Prosecutor, this was considered by the court in King County. It is argued that the issue decided by the prior two cases was whether any acts by King County with regard to the sale of liquor justified granting Campbell relief, that it was concluded on this issue that Campbell had failed to state a claim and therefore, the ruling in Thurston County was correct in holding that King County was properly dismissed under res judicata and collateral estoppel principles.

We find that the first King County cause of action was dismissed without prejudice, and the second King County cause of action sought only injunctive relief against the King County court. The County, therefore, erroneously concludes that the pivotal issue was necessarily decided in the second King County cause of action. We

hold that neither res judicata nor collateral estoppel barred the Thurston County cause of action.

Campbell asserts that he has stated a claim upon which relief can be granted. He argues that the King County Prosecutor has failed to prosecute misdemeanors for violations of the Food, Drug & Cosmetic Act, RCW Title 69, and that the prosecutor's failure to enforce the food and health laws constitutes invidious discrimination against the class of alcoholics. He asserts that the county prosecutor has authority to prosecute for false advertising under RCW 9102.060, for assault in various degreees under RCW 9A.36, and for the creation of a public nuisance under RCW 9.66.010 and has failed to do so.

We find that the lack of warning labels on alcoholic beverages does not violate the federal food and drug laws. The Bureau of Alcohol, Tobacco & Firearms

has exclusive authority over the regulation of alcoholic beverage labeling. Brown-Forman Distillers Corp. v. Matthews, 435 F. Supp. 5 (W.D. Ky. 1976). Similarly, the State Liquor Control Board has exclusive jurisdiction over the labeling of alcoholic beverages sold in this state subject to the primacy of federal statutes, regulations and rules.

The plaintiff does not have standing to complain about the prosecutor's failure to initiate criminal proceedings. He has not shown a present substantial injury as contrasted to an interest in the proceedings that is speculative or indirect. SAVE V. Bothell, 89 Wn.2d 862, 576 P.2d 401 (1978). Here there is no nexus between the alleged injury and the prosecutor's failure to initiate criminal proceedings. In addition, the prosecutor is immune from liability, and King County is also immune

from liability for the prosecutor's discretionary acts. Creelman v. Svenning, 67 Wn.2d 882, 410 P.2d 606 (1966). Further, the king County Prosecutor's failure to initiate criminal proceedings under state statutes does not render King County liable. In prosecuting violations of state criminal statutes, the prosecutor acts as an agent of the state. Thurston County v. Gorton, 85 Wn.2d 133, 530 P.2d 309 (1975).

We recognize that prosecutors have authority to initiate criminal proceedings under thestate Food, Drug & Cosmetic Act. RCW 69.04.160 provides in pertinent part:

> (1) It shall be the duty of each state attorney, county attorney, or city attorney to whom the director reports any violation of this chapter or regulations promulgated under it, to cause appropriate proceedings to be instituted in the proper courts without delay, and to be duly prosecuted as prescribed by law.

This statute limits the prosecutor's discretion to bring charges under the Food, Drug & Cosmetic Act. We note also that RCW

69.04.001 provides in part:

> This chapter is intended to enact state legislation (1)which safeguards the public health and promotes the public welfare . . .; and (2) which is uniform, as provided in this chapter, with the federal Food, Drug & Cosmetic Act; and with the federal Trade Commission Act . . .; and (3) which thus promotes uniformity of such laws and its administration in enforcement, in and throughout the United States.

We construe the law as requiring the State of interpret, administer and execute the state law in uniformity with the federal regulations and law. The Bureau of Alcohol, Tobacco & Firearms has exclusive jurisdiction over the labeling of alcoholic beverages sold in interstate commerce. The labeling of alcoholic beverages sold within the State of Washington should be consistent with the federal requirements.

4. The order dismissing the State of Washington in Thurston County cause No. 79-2-00249-3.

Campbell asserts that the Thurston County complaint should not have been dismissed for failure to state a claim. He

argues that his claim against the State derives directly and indirectly from the fundamental right to a healthy environment, that courts have inherent power to protect such fundamental rights and should prevent the State from polluting the environment by selling alcohol without adequate warning labels and violating the health laws of the state. Campbell's complaint seeks to enforce these rights by application of tort principles. The complainant asserts that the state's Food, Drug & Cosmetic Act applies to alcohol, and these health laws must be enforced for the benefit of the class of alcoholics. Campbell further claims that the State's action in selling alcohol without an adequate warning label renders it liable under strict liability tort concepts. He argues that the State's failure to label alcohol in accordance with the food and drug laws is relevant to his

claim for relief eitheras proof of negligence per se or as evidence of negligent conduct under 2 Restatement (Second) of Torts § 288b. It is his position that the immunity provision of RCW 66.08.100 does not cover the State's conduct in this case and that RCW 4.92.090 impliedly overrules the Liquor Board immunity. Further, he states that the sale of liquor with inadequate labels does not constitute a discretionary act and therefore no exception from tort liability exists. See Evangelical United Bretheren Church v. State, 67 Wn.2d 246, 207 P.2d 440 (1965).

We find that Campbell's claims all arise from acts or omissions involving the sale, labeling, or regulation of the sale of liquor. Title 66 RCW is a comprehensive legislative act dealing with these questions. The specific provisions of RCW 66.08.100 were not impliedly overruled by RCW 4.92.090 and continues to

grant immunity to the Liquor Board and the State for any claims arising out of the sale of liquor.

Campbell's claim under strict liability tort theory also must fail. Section 402A of Restatement (Second) of Torts is the basis of strict liability in Washington. Comment i to the Restatement defines "unreasonably dangerous" as used in strict liability law. The comment states in pertinent part:

> Many products cannot possibly be made entirely safe for all consumption, and any food or drug necessarily involves some risk of harm, if only from over-consumtpion . . . The articles sold must be dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics. Good whiskey is not unreasonably dangerous merely because it will make some people drunk, and is especially dangerous to alcoholics; but bad whiskey, containing a dangerous amount of fusel oil, is unreasonably dangerous.

(Italics ours.) 2 Restatement (Second) of Torts § 402A (1965). The Restatement

further provides in Comment j, relating to directions or warnings required, that:

> But a seller is not required to warn with respect to products, or ingredients in them, which are only dangerous, or potentially, so, when consumed in excessive quantity, or over a long period of time, when the danger, or potentiality of danger, is generally known and recognized. Again the dangers of alcoholic beverges are an example, as are also those of foods containing such substances as saturated fats, which may over a period of time have a deleterious effect upon the human heart.

(Italics ours.) 2 Restatement (Second) of Torts § 402A (1965).

We do not find any of the arguments of the plaintiff-appellant to be persuasive.

The judgments of dismissal are affirmed.

s/ Callow, J.

WE CONCUR:

s/ Ringold, J. s/ Durham, J.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040, IT IS SO ORDERED.

s/Frank D. James
CHIEF JUDGE

THE COURT OF APPEALS
OF THE
STATE OF WASHINGTON
SEATTLE 98104

March 3, 1981

Mr. Edward Campbell
Attorney at Law
3015 NW Market
No. 308
Seattle, WA 98107

Mr. John Hennen
Assistant Attorney General
Temple of Justice
Olympia, WA 98504

Ms. Wendy Krakauer, Dep.
King County Deputy Prosecuting Atty.
King County Courthouse
Seattle, WA 98104

Counsel:

Re: No. 8885-8-I, State v. Campbell

Enclosed is a copy of the order denying motion for reconsideration entered in the above proceedings today.

Within 30 days after the date of the order, the opinion of the Court of Appeals will become final unless, in accordance with RAP 13.4, counsel files a petition for review in this office. The content of a petition for review is prescribed by RAP 13.4(c). Note particularly that the petition should

contain a "direct and concise statement of the reason why review should be accepted under one or more of the tests established in [RAP 13.4(b)], with argument." RAP 13.4(c)(7).

In the event that a petition for review is filed, opposing counsel may file with the Clerk of the Supreme Court an answer to the petition within 15 days after the petition is served on him.

For counsel's information, the Supreme Court has determined that no filing fee will be required in that court.

Very truly yours,

s/
RICHARD D. TAYLOR

RDT/ch
Enclosure
cc: The Hon. John J. Champagne
Clerk of the Supreme Court

IN THE COURT OF APPEALS FOR THE
STATE OF WASHINGTON

EDWARD D. CAMPBELL, Appellant,	)	NO. 8885-8-I
v.	)	ORDER DENYING
STATE OF WASHINGTON AND KING COUNTY, Respondents.	)))	MOTION FOR RECONSIDERATION

The appellant, Edward D. Campbell, having filed his motion for reconsideration herein and the court having determined that it should be denied; Now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same hereby is, denied.

DATED this 3rd day of March, 1981.

s/ Solie M. Ringold
Acting Chief Judge

FILED
March 3, 1981

THE SUPREME COURT
STATE OF WASHINGTON
OLYMPIA 98504
April 23, 1981

Mr. Edward Campbell
Pro Se
3015 N.W. Market #308
Seattle, Washington 98107

Honorable Kenneth O. Eikenberry
Attorney General
Mr. John Hennen, Asst.
Temple of Justice Bldg.
Olympia, Washington 98504
MS-AV-21

Honorable Norm Maleng
King County Prosecutor
Ms. Wendy Krakauer, Deputy
King County Courthouse
Seattle, Washington 98104

Gentlemen:

Re: Supreme Court No. 47691-8-Edward Campbell v. State & King County
Court of Appeals No. 8885-8-I

On March 27, 1981, Counsel for Appellant filed a petition for review of the Court of Appeals opinion in the above entitled case. The petition has been assigned the referenced Supreme Court number.

A party opposed to the granting of the petition may file an answer within fifteen days after receiving service of the petition. See RAP 13.4(g) regarding reproduction and service.

The petition has been set for consideration without oral argument by a Department of the Court on or before May 8, 1981. If the members of the Department do not unanimously agree on the manner of the disposition, consideration of the petition will be continued for determination by the En Banc Court.

Very truly yours,

s/
JOHN J. CHAMPAGNE
Clerk

JJC:lb
cc: Court of Appeals, Division I

THE SUPREME COURT
STATE OF WASHINGTON
OLYMPIA 98504
May 8, 1981

Mr. Edward Campbell
Pro Se
3015 N.W. Market #308
Seattle, Washington 98107

Honorable Kenneth O. Eikenberry
Attorney General
Mr. John Hennen, Asst.
Temple of Justice Bldg.
Olympia, Washington 98504
MS-AV-21

Honorable Norm Maleng
King County Prosecutor
Ms. Wendy Krakauer, Deputy
King County Courthouse
Seattle, Washington 98104

Counsel:

Re: Supreme Court No. 47691-8- Edward Campbell v. State & King County Court of Appeals No. 8885-8-1

Following consideration of the above entitled Petition for Review on May 8, 1981, the following notation order was

entered on page 70, Volume 2, of the Petition for Review Docket:

"DENIED"

/s/ Robert F. Brachtenbach
Chief Justice

Very Truly Yours,

/s/
JOHN J. CHAMPAGNE
Clerk

JJC:lb

cc: Court of Appeals, Division I

IN THE COURT OF APPEALS FOR THE
STATE OF WASHINGTON

EDWARD D. CAMPBELL, Appellant,	)	NO. 8885-8-I
v.	)	MANDATE
STATE OF WASHINGTON AND KING COUNTY, Respondents.	)	King County No. 855608

The State of Washington to: The Superior Court of the State of Washington in and for King County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on February 9, 1981, became the decision terminating review of this court in the above entitled case on June 9, 1981. This cause is mandated to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Mandate after opinion is filed.

Pursuant to RAP 14.6(c), costs are taxed as follows: Eighty-three and 47/100 Dollars ($83.47) in favor of Respondent

King County; One Hundred Thirty-eight and 79/100 ($138.79) in favor of Respondent State of Washington; and Two Hundred Twenty-two and 26/100 Dollars ($222.26) against Appellant. The motion for reconsideration was denied by an order dated March 3, 1981; the petition for review was denied by an order dated May 8, 1981.

Hon. Jack P. Scholfield,
Presiding Judge Reporter of Decisions

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 9th day of June, 1981

s/
RICHARD D. TAYLOR
Clerk of the Court of Appeals,
State of Washington, Division I

cc: Mr. Edward Campbell
Hon. Kenneth O. Eikenberry
Attorney General
Mr. John Hennen, Asst.
Hon. Norm Maleng
King County Prosecuting Atty.
Ms. Wendy Krakauer, Deputy

SUPERIOR COURT OF THE STATE OF WASHINGTON
for the COUNTY OF KING

JUDGES CHAMBERS

DAVID C. HUNTER SEATTLE, WASHINGTON
98104

January 10, 1979

Mr. Edward D. Campbell
Attorney at Law
505 Central Building
Seattle, WA 98104

Mr. Norman K. Maleng
Prosecuting Attorney
W554 King County Courthouse
Seattle, WA 98104

Attn: Wendy Krakauer
Deputy, Civil Division
Slade Gorton
Attorney General
Temple of Justice
Olympia, WA 98504

John G. Hennen
Assistant Attorney General
Attorneys for Defendant
Temple of Justice
Olympia, WA 98504

RE: Campbell v. State of Washington, Washington State Liquor Control Board, King County, and the Justice and Superior Courts thereof.
King County Cause No. 852 565

Dear Counsel:

Due to the press of our trial calendar, it has been difficult for me to find the time to absorb the voluminous memoranda with which I have been furnished in this case. I have, however, considered the memoranda rather carefully since I am aware that Mr. Campbell has put a great deal of work and thought into this unusual lawsuit. I have reached the conclusion, however, that the motions on behalf of the County and the State must be granted. Those on behalf of the State must be granted if for no other reason that for a lack of jurisdiction on the part of King County Superior Court to act. Additionally, there is the question of the failure to serve the chief fiscal officer of the Executive Branch prior to commencing suit and the failure to file a cost bond as required by statute.

King County motion to dismiss must be granted because of the failure of the

plaintiff to state a claim upon which relief may be granted. I am very sure that alcoholism is a very serious problem and one with which King county and the State of Washington and all citizens must be concerned. The problem, however, is one which must be addressed by the legislature rather than by attempted judicial legislation and I would strongly suggest to Mr. Campbell and those who have a similar mind that they expend their energies by attempting to obtain legislation to accomplish their ends rather than by using the courts improperly. Accordingly, the motions of both defendants will be granted.

Very truly yours,

s/
David C. Hunter

DCH:ar

IN THE SUPERIOR COURT OF THE STATE
OF WASHINGTON IN AND FOR THE
COUNTY OF KING

EDWARD D. CAMPBELL, Plaintiff,	)	NO. 852565 855608
v.	)	
STATE OF WASHINGTON STATE LIQUOR CONTROL BOARD, Defendant.	)	

VERBATIM REPORT OF PROCEEDINGS

Before: The HONORABLE DAVID C. HUNTER

February 16, 1979.

APPEARANCES:

For the Plaintiff:	Appearing in his own behalf.
For the Defendant State of Washington:	JOHN G. HENNEN
For the Defendant King County:	C. WENDY KRAKAUER
For the Defendant City of Seattle:	PHILIP MORTENSON

Court Reporter: Ronald L. Struve, C.S.R.

SEATTLE, WASHINGTON: February 16, 1979.

* * *

MR. HENNEN: Your Honor, I am John Hennen with the Liquor Control Board, and I had noted up an order to be signed based on your letter opinion earlier, and here it is.

THE COURT: All right.

MR. CAMPBELL: Your Honor, I would -- as to that particular order, I have no objections to it. There are three statements made in these as to the reason why --

MR. HENNEN: That's not the same one.

MR. CAMPBELL: Isn't this one -- this is the order you gave me.

MR. HENNEN: No, it isn't. It's the second one I gave you.

MR. CAMPBELL: I don't have a copy of any others.

THE COURT: Here's the original.

MR. HENNEN: It simply deals with the question of jurisdiction and King County

Superior Court.

MR. CAMPBELL: I am sorry. I was looking at an earlier order I have been served.

MR. HENNEN: That's the one I just presented.

MR. CAMPBELL: I am sorry, your Honor. I was looking at another order he presented earlier, which he named three different reasons for dismissal, and I was going to say that two of them were fine, but the third one is the one I thought was unneccesary.

THE COURT: Well, all right. Let's then, take the order that he is proposing now.

MR. CAMPBELL: I recall the original reasons, your Honor, to dismiss. There were three. One, that I failed in the original action to file a claim with the State, and it was correct: I didn't. And I had failed to file a bond in that action.

Those two I understand, and by themselves were perfectly satisfactory for dismissal, and they could be cured.

The third reason; it was jurisdiction. It was not necessary I would, in fact, say because the original order only had the first two, that the third one was not necessary. It might be inappropriately binding the Court to some future course as far as jurisdiction goes, when it was not necessary to decide the jurisdictional question when the original problem with the claim, failure to file the claim and failure to file the bond would have been sufficient for dismissal. And the same matter may come up in the second lawsuit or may not come up in the second lawsuit, but if it did, I think it is more appropriate since, if I were to be faced with an appeal of this lawsuit, I couldn't win the appeal in any event because I didn't file the bond and I didn't file the claim and I would

lose it on appeal. But we couldn't get a decision on the jurisdictional question, in any event.

So, I can recognize that I missed on the original lawsuit on the failure to file the bond and failure to file the claim. But it would not give us an appropriate -- we wouldn't have an appropriate action to test the jurisdictional question in the Court of Appeals.

So, I am suggesting that the matter be -- that the reliance on the order itself be merely reliance on the failure to file the claim and the bond, which the Court noted to begin with. I would suggest that more appropriate. And then we wouldn't -- I am not faced with a possibility of trying to file an appeal on a case that I can't win anyway but would still muddy the water on the jurisdictional question, and the Court couldn't get the benefit of a clear review of the jurisdictional question,

which is the first time that the question has actually been raised under the new statutes, and I hate to see it clouded by a muddy appeal, muddy case.

MR. HENNEN: The order I presented deals solely with the jurisdictional question. I don't know how Mr. Campbell thinks it is going to be muddy. The other two grounds could be waived and are, in fact, waived, I guess. But the third, the jurisdictional ground, which is the sole ground in the order I presented, in the first one mentioned in your Honor's letter of January 10, can't be waived.

MR. CAMPBELL: Did I understand you correctly that you are at this point -- if I were to take this on appeal, would the first two grounds be waived?

MR. HENNEN: They are not included in that order.

THE COURT: He, in other words, is saying that as far as the State is con-

cerned, the only thing they are relying on is the jurisdictional question.

MR. HENNEN: Yes.

MR. CAMPBELL: Then I probably -- if I had a clear appeal on that particular matter, I probably wouldn't have objected to that order as such.

MR. HENNEN: That order will give you -- that's the one you --

THE COURT: That is what it says.

MR. CAMPBELL: That is what I said.

THE COURT: Failure to state a claim.

MR. CAMPBELL: But I didn't want to be faced coming to you -- you did write in your oral opinion giving the other reason.

THE COURT: Yes, I know. I included the additional grounds of failure to file a claim and failure to file a bond.

MR. CAMPBELL: That's correct.

MR. HENNEN: Well, yes, I think -- well --

THE COURT: Mr. Hennen has said --

MR. CAMPBELL: I just heard him say waiver. I think that binds the State.

MR. HENNEN: So insofar as this lawsuit is concerned, I am not going to raise the cost bond or the failure to file a claim on an appeal in Cause No. 852565. Those, in any event, have been cured in the second action in which we take positions the same as the first one. That's 855608, I believe.

THE COURT: Okay. In order to -- you're satisfied it says that it is granted for failure to state a claim upon -- by relief can be granted?

MR. HENNEN: Because there is no jurisdiction.

MR. CAMPBELL: Because there is no jurisdiction in King County. I would like that added.

THE COURT: If I amended it to that effect --

MR. HENNEN: That would be fine. Yes, I said all along I believe that if Mr. Campbell wanted to bring this in Thurston County, why, we can get onto the merits, but he doesn't seem to want to do so.

MR. CAMPBELL: I can't sue King County in Thurston County.

THE COURT: I can't give you legal -- but I am not sure about that either. I have signed your order with that amendment, and, Mr. Hennen, will you endorse it?

MR. HENNEN: Yes.

THE COURT: Now, what else do we have?

MR. HENNEN: I believe King County and myself have also noted motions before this Court involving No. 885808 on the basis that they are, in essence, the same lawsuit. The names have been changed at the start but the relief asked for is exactly

the same, and I believe that insofar as the State's concerned, the complaint in 855608 does not state a claim insofar as it arises out of the sale labeling regulation, and so on, of liquor, as those are functions of the Liquor Control Board and based on the Court's earlier ruling in another case, those must be brought at Thurston County.

Now, what's asked for in the complaint is word for word literally the same as in the first action. Insofar as the State is concerned involving liquor I think it states no claim, and seeing as how that's all it does involve is liquor, I think it states no claim in general.

THE COURT: Does King County have anything to say?

MS. KRAKAUER: Yes, your Honor. King County has brought a motion to dismiss the second lawsuit. It's identical to the first lawsuit with the exception that instead of suing all of King County, the

plaintiff has sued only the Superior Court and the Northeast and Shoreline District Justice Courts. The sole indication of what he is asking for against those bodies is injunctive relief, and because your Honor ruled he had failed to state a claim to seek such relief in the first action, the County is asking that this action also be dismissed. In the second complaint he has raised a few more allegations including violations of World Health Organization Constitution and Nuremberg Principles of International Law, but as to the County defendants, those still do not give rise to a cause of action, and, therefore, we ask that this motion to dismiss be granted.

THE COURT: Okay. Mr. Campbell.

MR. CAMPBELL: All right. First, your Honor, I do not believe that these causes are synonymous. There are some few pages that are synonymous, but in this second complaint -- I think the first cause of

action stated seven causes of action. The second complaint states 21 causes of action, a good deal more than the first. It gets into certain Constitutional treaty and basic laws that were not involved in the first cause of action. It gets into the Civil Rights Act and a few other things that were not involved in the first cause of action, and is, indeed, a different and larger cause of action than the first cause. As a matter of fact, I think even the sums of money involved in the prayers for relief are considerably larger in the second cause of action than in the first cause of action.

So I cannot agree that they are substantially the same lawsuits. They are not.

The State departments that are named in the second cause of action as opposed to the first cause of action are quite expanded, including the Department of Social

and Health Services, Department of Motor Vehicles, and Departmental Coordinating Community Mental Health Services, State Mental Health Deparmment, as well as some of the County's and the State's -- and other things. There are a good deal more that we are looking at in those. . . .

THE COURT: What is before me right now on this?

MS. KRAKAUER: The motion of the County on behalf of Superior Court and the Justice Courts, and motion of the State to dismiss for failure to state a claim.

MR. HENNEN: That's correct.

THE COURT: Mr. Campbell has interposed his affidavit of prejudice.

MS. KRAKAUER: That's correct, your Honor.

THE COURT: Well, my reflexes to the allegations of Mr. Campbell about my telephoning him -- my recollection is that it was a situation I didn't know Mr.

Campbell well enough to -- as he himself stated, he had no reason and I have no reason to suspect -- I certainly don't follow every attorney who is going to appear before me and call him and ask hm whether he is going to disqualify me. I am reading the documents. I discovered that the judges of King County were named as parties and accordingly, I was fearful that I would have spent all the time reading those and then find I was disqualified because I was a party of the action.

Mr. Campbell assured me that it was not his intent. It wasn't because I felt there was any personal reason between Mr. Campbell and myself that I thought so, but he told me that at that time it wasn't, so that was the reason for the phone call. Not because I felt there was some animosity or any other thing between Mr. Campbell and myself. Be that as it may, that does not matter. If he is entitled to file an

affidavit, he is entitled to regardless of why I made the phone call, and if he is not, he is not. I would like to ask Mr. Campbell again, what do you contend are the differences that make this lawsuit?

Let me go back a second and say that I do feel that if an attorney loses a matter before a judge, he cannot thereafter go and file an identical lawsuit and file an affidavit of prejudice against that same judge and say, you know, I am going to try it over again before some other judge.

Now, if there are differences, that may be a different matter, and this I don't know.

What are the differences?

MR. CAMPBELL: All right, your Honor. There are a number of differences, your Honor. First, the suit did not deal with any of the treaty laws that were brought out in the second suit, specifically the World Health treaty, which there is some

specific applications, statements of legal principles, which the United States became a party to in 1948, which I think are directly applicable to the situations of the facts that I pleaded that were not pleaded at all in the first lawsuit, as a completely separate cause of action.

There were also some -- because in one area of the State's activities, the State deals with using alcohol as an experimental drug. There are principles that were laid down -- judicial principles laid down in Nuremberg which have been referred to throughout the years on use of experimental drugs, which is another cause of action that was put in the new suit that were not involved -- there were a number of specific statutes that were set forth in the second lawsuit that were not set forth in the first lawsuit as such. As I say, there are 21 separate causes of action in the second

lawsuit as compared to about seven in the first.

There is no clear statement of -- there were some allusions in the first lawsuit as to possible Constitutional violations, but no clear statement of any in the second lawsuit, clearly stated as set out in violations of both the 14th Amendment of the U.S. Constitution, Article I, Section 12 of the Washington State Constitution, 42 U.S.C. 1983 and 1985, on the civil rights areas. Those were not clearly delineated in the first cause of action. Some of the causes are clarified as from the first. And when it gets to the Food and Drug Acts, whereas there were some general allegations in the first cause, the second cause of action specifically points out ten specific statutory violations of the Food and Drug Acts, actually, specifically sets them forth.

Also, there is some certain new Federal acts that would be thrown in such as the Federal Hazardous Substance Act, which was not in the first cause of action, and there are specific sections of the Federal Food and Drug Act which were not specifically pleaded in the first cause of action, and specific sections of the Code of Federal Regulations that were not in the first cause of action, all much more detailed in the second cause of action than in the first cause of action, plus these additional points under the treaties and the Nuremberg rights, which make it a completely different cause of action and would cause me to respond differently even on the types of motions, although there is nothing in this case right now. There is no file to respond. Everything is referred to the other file.

And I am not at this point trying to -- I am not even given the opportunity at

this time to defend this particular suit because we are all defending it on the basis of what was filed in the other case.

Well, this is a vastly expanded, larger lawsuit.

And I might also mention since we are passing that this also has the same problem with it as the other in that, again, this was not noted on the motion calendar, and it was a particularly -- is almost as if they, the County and the State, were preassigning the judge in this case. Normally, if they had motions, it would have come up under the motion calendar, which is considered a normal measure, but this is not the case here.

MS. KRAKAUER: Your Honor, if I may respond, first of all, I think there is a difference between the State and the County here. As I said earlier, the only county defendants that have been sued in the

second lawsuit are the Superior Court and the Northeast District Justice Court and the Shoreline District Justice Court. The relief asked for in the second lawsuit is indicated on page 30 of the complaint. It is identical to the relief he asked for as to those defendants in the first lawsuit. Mr. Campbell himself indicated to me this morning that he resolved matters in Northeast District Justice Court. There is not even any need to seek relief in that form.

And I think it is clear that as to the County defendants this is an identical lawsuit.

MR. HENNEN: Your Honor, I think the question on which we should focus as to whether this is a different lawsuit or the same one is what it asks for, and it asks for word for word -- this is like it came out of an IBM typewriter that was typed in for the first complaint word for word.

Liquor is involved insofar as the State is concerned, and he is asking for injunctions against the State selling liquor. He is asking for money from the State liquor revenues. He is asking for exactly the same thing as what he asked in the first suit, and to the extent that that involves or interferes with the operations of the Liquor Control Board, which it would as far as liquor is concerned, it falls into exactly the same category as the first suit, so it is a question of what relief he is seeking and what relief the Court can grant, and on that, they are identical. By bringing in various other provisions which may or may not apply on which he seeks to make some arguments that he is entitled to some relief of one kind or another, I don't think he has changed the basic nature of the lawsuit in that he is asking for the same thing and that can't be granted by the King County Superior Court.

THE COURT: What you are getting back to, then, is that regardless of his additional claims under the World Health Act or the Nuremberg agreements and so forth, we are getting back to the question of whether this Court has jurisdiction to try a case against the State and the Liquor Board.

MR. HENNEN: That's correct, your Honor. And I think that, as I said a number of times -- probably earlier today I said it, too -- if Mr. Campbell wants to sue the Liquor Control Board, he can do it in Thurston County. This isn't a situaion where he has no forum that he can go to to raise these claims. And I think they should be raised there. They can't be raised here.

THE COURT: Well, I think I agree that -- to the extent that this other lawsuit, 855608, is attempting to sue the State of Washington and the Liquor Board in King County --

MR. CAMPBELL: The Liquor Board is not even named in that -- this lawsuit.

THE COURT: All right. The State of Washington. Insofar as it is attempting to sue the State of Washington, King County, that this county lacks jurisdiction, and accordingly, that action should be dismissed in King County and again without prejudice, with leave to re-file it in Thurston County.

MS. KRAKAUER: Your Honor, I have prepared a motion for the County, an order. Mr. Campbell, if you would like to look at it.

MR. HENNEN: I have one for the State also. We may have to annotate it a little bit like the last one.

THE COURT: Mr. Campbell, do you wish to say anything about the King County proposed order?

MR. CAMPBELL: Talking about it, I take it you are asking me if I would

comment on the form of their order, your Honor.

THE COURT: Yes.

MR. CAMPBELL: I have no comments on the form of their order, your Honor.

THE COURT: Very well. Now, how about the State's proposed order?

MR. HENNEN: Could put something there, with leave to file in Thurston County.

THE COURT: Just put in without prejudice, I suppose.

MR. HENNEN: Okay.

THE COURT: And also the language that it is for lack of jurisdiction in King County.

MR. CAMPBELL: This forces me to appeal both suits, your Honor, because there is absolutely nothing in the record of this particular lawsuit that justifies this. There are no affidavits or anything

else in this lawsuit that stands behind any of these two orders.

MR. HENNEN: You cannot appeal without prejudice.

MR. CAMPBELL: On jurisdiction I ask for certiorari on the jurisdiction. It forces me to ask for certiorari on both -- on it without even a full record.

THE COURT: Let's go back just a minute. I think, Mr. Campbell, that I am restricting the order of dismissal to the same issues which were taken up in Cause No. 852565, and for that reason, I don't need further affidavits. If I were dismissing it on the basis that your complaint was identical with the complaint in the other action, why, obviously, then I would need some, and because, as you mentioned, you brought it on a number of different grounds, and I am not passing on those at all. I don't intend to pass on your theory about the World Health treaty or the

Nuremberg Civil Rights Act, any of those things.

I am just reflecting myself to the question of jurisdiction of this Court to try a case involving the State of Washington.

MR. CAMPBELL: Well, as I understand, your Honor, that's all it was in the initial dismissal. You were not -- at least the order, as I read it, you did not rule on whether or not I would have a legitemate case for product liability case, as I understand the order. I am just pointing out the difficulties I have if I ask for certiorari of jumping from one file to another on the matter. This would be the case, that if it does go up on appeal, this would be the obvious one that I would take, either certiorari or appeal, because I believe the matter is set out.

That's the problem I have.

THE COURT: Maybe the State's got another problem then. When you get up on certiorari, the State hasn't perfected its record. Oh, I don't know. But I just feel that as to that one issue of jurisdiction, that it is the same identical one with the earlier 852565, and that, therefore, I should grant the same relief that I did in the other case. I have signed the order.

MS. KRAKAUER: Your Honor, maybe we should also get the files back because they are checked out. One of them is checked out to me.

MR. HENNEN: One of them is checked out to me, too.

THE COURT: All right. Would you give them the files?

MS. KRAKAUER: Thank you, your Honor.

(End of requested transcription.)

IN THE SUPERIOR COURT OF THE STATE
OF WASHINGTON IN AND FOR THE
COUNTY OF KING

EDWARD D. CAMPBELL, Plaintiff,	)	NO. 855608
v.	)	ORDER GRANTING
STATE OF WASHINGTON, et al. Defendants.	)	MOTION TO DISMISS

THIS MATTER having come on for hearing on the Motion of Defendant State of Washington, pursuant to CR 12(b) (6), to dismiss Plaintiff's complaint as to it for failure to state a claim upon which relief can be granted, said Defendant appearing by Slade Gorton, Attorney General, and John G. Hennen, Assistant Attorney General, and Plaintiff appearing pro se, and the court having heard oral argument, considered the files and records herein, and being fully advised, now, therefore,

IT IS HEREBY ORDERED That the complaint herein be, and the same hereby is, dismissed without prejudice as to Defendant State of Washington for failure to state a

claim upon which relief can be granted because of a lack of jurisdiction in King County.

DATED this 16th day of February, 1979.

s/
David C. Hunter, Judge

Presented by:

SLADE GORTON
Attorney General

s/
John G. Hennen
Assistant Attorney General
Attorneys for Defendant
State of Washington

Order Granting M/Dismiss - 1

SLADE GORTON
Attorney General
Temple of Justice
Olympia, Washington
98504

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF KING

EDWARD D. CAMPBELL, Plaintiff,	)	NO. 855608
v.	)	ORDER GRANTING
STATE OF WASHINGTON, et al.	)	KING COUNTY'S MOTION FOR
Defendants.	)	DISMISSAL

THIS MATTER having come on regularly before the undersigned judge on the motion of defendants King County Superior Court and Shoreline and Northeast District Justice Courts for dismissal, and the court having read the pleadings and files on record herein, and having been fully advised by counsel, and it appearing that plaintiff has failed to state a claim upon which relief may be granted, now, therefore:

IT IS HEREBY ORDERED that defendant's motion be granted and that judgment be entered in favor of defendants King County Superior Court and Shoreline and Northeast District Justice Court, and all claims

against said defendants be dismissed without costs.

DATED this 16th day of February, 1979.

Presented by:

NORM MALENG
Prosecuting Attorney

s/David C. Hunt
Judge

s/
WENDY KRAKAUER
Deputy Prosecuting Attorney
Attorneys for Defendants
King County Superior Court
and Shoreline and Northeast
District Justice Courts

NORM MALENG
Prosecuting Attorney
W554 King County
Courthouse
Seattle, Washington
98104 344-2550

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF THURSTON

EDWARD D. CAMPBELL, Plaintiff, v. THE STATE OF WASHINGTON, KING COUNTY, AND SUCH OTHER DEFENDANTS WHOSE NAMES ARE PRESENTLY NOT FULLY KNOWN BUT ARE DESCRIBED IN TITLE VII PARAGRAPHS 11.011 and 11.012 OF THE COMPLAINT FILED HEREIN, Defendants.	NO. 79 2 00249 3

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 9th day of April, 1979, at the hour of 10:00 a.m., the above-entitled and numbered cause came regularly on for hearing before the Honorable HEWITT A. HENRY, one of the judges of the above-entitled Court, sitting in Department No. 1 thereof, at the Thurston county Courthouse, Olympia, Washington.

The plaintiff, EDWARD D. CAMPBELL, appearing in person.

The defendant STATE OF WASHINGTON, represented by JOHN G. HENNEN, Assistant Attorney General.

The defendant KING COUNTY, represented by WENDY KRAKAUER, Deputy Prosecuting Attorney.

WHEREUPON, the following proceedings were had and occurred to-wit:

* * *

THE COURT: The Court has read the complaint. The arguments of counsel, the Court feels this case under the statute is ripe at this time for summary judgment. I can understand Mr. Campbell's problem. The only thing the Court in reading through the whole complaint and reading the statutes and reading the powers and duties of the Liquor Board, the plaintiff must first it appears to the Court establish some wrongful act on the part of the Liquor Board, where most of the argument here is their failure to do something. The Liquor Board receives its power from the legislature and

always has as to what it can and cannot do. Necessarily the failure to do something which the complainant here feels should be done, unless it is mandatorily directed by the legislature, I can find absolutely no liability on the Liquor Board whatsoever. Further using the fact situation, that the way the complainant would choose is that a warning such as is on cigarettes should be on the liquor bottle. I caution you, however, no one ever forced the Director of the Health and Welfare Department of the United States to put it on. He was finally directed by mandate by congress. No one took him into Court and forced him to put that language on cigarettes.

The portion of the complaint asking to stay any proceedings in King County as far as enforcing the laws, the driving laws, and here I take it, Mr. Campbell, it was driving while license suspended but it was a prior situation of driving while under

the influence, this Court cannot stay the law. Whether this would be considered a defense would be before that Court in which the matter was proceeding.

As argued by the Attorney General, in this case Mr. Campbell, what you are asking the Court to do literally is a legislative function. I can find no unconstitutionality as to the original Act, the power to the Board. I can find no malfeasance on the part of the Board as far as doing something they shouldn't do. The allegation of misfeasance is the failure to do something you feel they should do. This is a legislative function, not a function of a court of law. Too often we are criticized for stepping in and legislating; and certainly what is asked here, is, in the Court's opinion, strictly legislative. I have the power solely to find whether there has been an abuse of power or a failure to do a directive the legislature has direc-

ted, or I can review the constitutionality of some provision, or I can interpret terms used in their legal sense as to which is right and which is wrong. That resolves a controversy if the Court can clarify what the legislative intent was. Here that is not what you are asking the Court to do. You are asking the Court to go in and do something you say the Liquor Board should have done. I can find no direct mandate from the legislature. I am not going to comment of the Health Department laws as compared to Liquor Board laws. It would appear to the Court on a health basis, that is a function of the Director of Health, not the Liquor Board. They weren't given the power to contemplate or consider health measures. I feel under the circumstances as far as finding no basis to condemn, shall we say, the acts of the Liquor Board, the action for damages does not lie. The Court does not feel it has any jurisdiction

or authority as far as this court here on the effect of any criminal charges concerning driving violations that are pending in this matter.

It will be the judgment of the Court at this time that the request for summary judgment by the defendant herein and the relief prayed for will be granted. This matter actually will be dismissed. Court will be in recess.

(Court was thereupon recessed at 11:15 a.m.)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF THURSTON

EDWARD D. CAMPBELL, Plaintiff, v. THE STATE OF WASHINGTON, KING COUNTY, AND SUCH OTHER DEFENDANTS WHOSE NAMES ARE PRESENTLY NOT FULLY KNOWN BUT ARE DESCRIBED IN TITLE VII PARAGRAPHS 11.011 and 11.012 OF THE COMPLAINT FILED HEREIN, Defendants.	NO. 79 2 00249 3

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 23rd day of April, 1979, at the hour of 1:30 p.m., the above-entitled and numbered cause came regularly on for hearing before the Honorable HEWITT A. HENRY, one of the judges of the above-entitled Court, sitting in Department No. 1 thereof, at the Thurston County Courthouse, Olympia, Washington.

The plaintiff, EDWARD D. CAMPBELL, appearing in person.

The defendant STATE OF WASHINGTON, represented by JOHN G. HENNEN, Assistant Attorney General.

The defendant KING COUNTY, represented by WENDY KRAKAUER, Deputy Prosecuting Attorney.

WHEREUPON, the following proceedings were had and occurred to-wit:

* * * *

THE COURT: I have examined the voluminous briefs and the pleadings and it is the opinion of the Court at this time that King County may take their motion to dismiss. I feel that it probably can be sustained on res judicata after going through the files. The same result is asked in all cases. It probably could be sustained on collateral estoppel. The Court will find that, but in addition if those grounds do not exist, the Court does not find a justicable issue involved which this Court feels it can make any decision

on. There is a nice question as far as King County whether this Court as argued by the Prosecuting Attorney, that I could even direct an order against King County on their conduct. The action should have been if anything to have appealed from the judgment of dismissal at that time to a Court of Appeals. Injunctive relief as argued by the Deputy Prosecutor is sought by the plaintiff herein and that is to enjoin the enforcement of the traffic laws of the State of Washington, King County.

* * * *

(On Motion To Reconsider Dismissal of State of Washington)

THE COURT: Of course I have already considered this once. On the face of it, I would be concerned with the amount of notice given and everything, but it is the understanding of the Court there is no question, Mr. Campbell, that the original motion filed was for summary judgment.

You were given notice of same. The question of whether there are multiple parties doesn't seem to be before the Court at this time. I have the State of Washington and King County as the main parties and this is what the motion for summary judgment was to consider. Even if I considered your affidavit, your own affidavit which you filed now, I don't think the affidavit of the Liquor Board in itself was prevailing. The Court in going over the matter primarily considered the pleadings, felt the relief you asked for, while it may be and it certainly is demanded. The Court is satisfied this isn't the way you go about getting that relief. The relief which you pray for is not available through the channels as far as the Court is concerned in examining the pleadings in the manner in which you have attempted to seek relief. I do not feel there is a judicable issue which can't be considered. I will still

adopt as my prior ruling that after examining the whole of the file that the motion for summary judgment -- there is no material fact which must be resolved by any trial for the Court to rule. I find no issue which could be I feel on examining the file before the Court on the basis of a trial. Therefore the Court denies the motion for reconsideration at this time. If the Court is wrong or even in the King County cases, Mr. Campbell, I think your recourse if the courts are wrong both in King county and here, the recourse is through appeal rather than starting another lawsuit which the Court in exmaining the background of the other two lawsuits with this, you are seeking the same relief.

It will be the judgment of the Court at this time that the motion for reconsideration be denied. You don't have an order today, counsel?

* * * *

SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

EDWARD D. CAMPBELL Plaintiff, vs. STATE OF WASHINGTON, et al., Defendants.	)	NO. 79-2-00249-3 ORDER GRANTING KING COUNTY'S MOTION FOR JUDGMENT ON THE PLEADINGS

THIS MATTER having come on regularly before the undersigned judge on the motion of defendant King County for judgment on the pleadings filed in this cause, and the Court having read the pleadings and files on record herein, and having been fully advised by counsel, and it appearing that plaintiff has failed to state a claim upon which relief may be granted, and it further appearing that plaintiff's claim is barred by reason of the doctrines of res judicata and collateral estoppel stemming from orders of dismissal entered in King County Superior Court Cause No.'s 852565 and 855608, now, therefore:

IT IS HEREBY ORDERED that King County's motion be granted, that judgment be entered in favor of defendant King County and that all claims against said defendant be dismissed with prejudice.

IT IS FURTHER ORDERED that defendant King County be awarded $35.00 in attorney's fees as provided for by RCW Chapter 4.87.

DONE IN OPEN COURT this 23rd day of April, 1979.

s/
The Honorable Hewitt A. Henry, Judge

Presented by:

NORM MALENG
Prosecuting Attorney

By
WENDY KRAKAUER
Deputy Prosecuting Attorney
Attorneys for Defendant King County

SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

EDWARD D. CAMPBELL Plaintiff, vs. STATE OF WASHINGTON, et al., Defendants.	NO. 79-2-00249-3 ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT STATE OF WASHINGTON

THIS MATTER having come on before the undersigned judge on April 9, 1979 on the motion of Defendant State of Washington for a summary judgment in its favor, and Defendant being represented by and through its attorneys Slade Gorton, Attorney General, and John G. Hennen, Assistant Attorney General and Plaintiff appearing and being represented pro se, and the court having considered the pleadings and files herein and having heard the argument of counsel and being fully advised, now therefore,

The court hereby finds that there exists no issue of material fact herein and

that Defendant State of Washington is entitled to a summary judgment in its favor as a matter of law for the reason that the complaint fails to state a claim against Defendant State of Washington upon which relief can be granted by virtue of RCW 66.08.100 and chapter 70.96A RCW and that the subject matter of the claims for relief against Defendant State of Washington are matters which are within the realm of the legislature, rather than being justiciable within the judicial branch.

NOW THEREFORE, IT IS HEREBY ORDERED, that judgment is hereby granted in favor of Defendant State of Washington on all claims for relief against Defendant State of Washington contained in the complaint herein.

IT IS FURTHER ORDERED, that the motion of Plaintiff for reconsideration of this

court's decision, which motion was heard by the court April 32, 1979, be and the same hereby is, denied.

Presented by

s/ Hewett Henry
Judge

s/
John G. Hennen
Assistant Attorney General

Approved as to Form,
Notice of Presentation Waived

s/
Edward D. Campbell

3015 N.W. Market No. 308
783 3410

February 22, 1980

Mr. John J. Champagne
Clerk of the Supreme Court
Temple of Justice
Olympia, Washington 98504

Re: No. 46092 - Campbell v. State
(Consolidated with No. 46242)

Dear Mr. Champagne:

Enclosed is "Appellants Special Response and Brief in Reply to Brief of Respondent King County". The title is explained on page 3 of the brief. It does cover material that had to be omitted in the original brief because of limitation of length in the Commissioner's order. However, it is also a reply brief within the rules. Never-the-less, the Court may wish to treat it more as an original brief for the purpose of authorizing responses otherwise authorized by the rules.

Very truly yours,

Edward D. Campbell

FDC:edc
Enclosure: Brief.

THE SUPREME COURT
State of Washington
Olympia
98504

February 27, 1980

Mr. Edward D. Campbell
Attorney at Law
3015 N. W. Market, No. 308
Seattle, WA 98107

Re: No. 46092 - CAMPBELL v. STATE, et al
(Consolidated with No. 46242)

Dear Mr. Campbell:

This will acknowledge receipt of your two letters of February 22, 1980, together with the original of Appellant's Special Response and Brief in Reply to Brief of Respondent King County, which we are returning herewith as not being in compliance with the Rules of Appellate Procedure - particularly RAP 10.3(c). The fact of noncompliance is admitted in your letter of February 22, 1980. The undersigned will not file any brief or pleading which is not in compliance with the Rules

of Appellate Procedure for the simple reason that I am not authorized to do so.

As you are aware, the Commissioner granted special permission to file an appellant's brief of 90 pages, which was more than ample to discuss all of the issues involved in this case. The respondents are not, under the rules, permitted to file an answer to a reply brief in which new matters are raised that should have been covered in the initial appellant's brief. We strongly suggest that you read the rules regarding the filing of a reply brief and what may be contained therein in reply to the respondent's brief, and not

attempt to extend the appellant's brief to include material to which the respondent is not entitled to respond.

Very truly yours,

s/
JOHN J. CHAMPAGNE
Clerk

JJC:je
Enclosure
cc: Honorable Slade Gorton
Attorney General
Mr. John G. Hennen, Assistant

THE SUPREME COURT
State of Washington
Olympia
98504

April 3, 1980

COPY RECEIVED
APR 4 1980
EDWARD D. CAMPBELL

Mr. Edward D. Campbell
Attorney at Law
3015 N. W. Market, No. 308
Seattle, WA 98107

Honorable Slade Gorton
Attorney General
Mr. John G. Hennen, Assistant
Temple of Justice
Olympia, WA 98504

Honorable Norm Maleng
King County Prosecuting Attorney
Ms. Wendy Krakauer, Deputy
King County Courthouse
Seattle, WA 98104

Re: No. 46092 - CAMPBELL v. STATE, ET AL
(Consolidated with No. 46242

Counsel:

Following a hearing this day in the above referenced case, the following

Notation Order was entered in Volume 14, at page 532, of the Motion Docket:

"MOTION TO MODIFY CLERK'S RULING:

DENIED

/s/ Robert F. Utter,
Chief Justice."

Very truly yours,

s/
JOHN J. CHAMPAGNE
CLERK

JJC:je

THE SUPREME COURT
State of Washington
Olympia
98504

May 23, 1980

COPY RECEIVED
MAY 27 1980
EDWARD D. CAMPBELL

Honorable Richard D. Taylor, Clerk
Division I, Court of Appeals
10th Floor, Pacific Building
Third & Columbia
Seattle, Washington 98104

Dear Sir:

Re: Supreme Court No. 46092 - Edward D. Campbell v. State of Washington
Superior Court No. 855608 No. 46242
(Consol. w/No. 46092

On May 23, 1980, the Court reviewed the referenced case and decided that the cause should be transferred for determination to the Court of Appeals.

Accordingly, the record in the case is being forwarded under separate cover for decision by your division as the geographically most convenient forum.

Please acknowledge receipt of the record on the duplicate of this letter.

Very truly yours,

s/
JOHN J. CHAMPAGNE
Clerk

JJC:dd

cc: Mr. Edward D. Campbell
Attorney at Law
Honorable Slade Gorton
Mr. John G. Hennen, Ass't.
Honorable Norm Maleng
Ms. Wendy Krakauer, Deputy
Honorable Kenneth S. Helm, Clerk
King County Superior Court

Appendix B

CONSTITUTION

Article 1 § 10

No State shall . . . grant any Title of Nobility.

Article 4 § 4

The United States shall guarantee to every State in this Union a Republic Form of Government . . .

Article 6

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Auithority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Amendment 1

Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people . . . to petition the Government for a redress of grievances.

Amendment 9

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment 14

. . .No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, wi.hout due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws.

Amendment 18

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Amendment 21

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Sec. 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

59 Stat. 1031. World Health Organization Declaration of Rights

The States parties to this Constitution declare, in conformity with the Charter of the United Nations, that the following principles are basic to the happiness, harmonious relations and security of all peoples:

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.

The health of all peoples is fundamental to the attainment of peace and security and is dependent upon the fullest co-operation of individuals and states.

The extension to all peoples of the benefits of medical, psychological and related knowledge is essential to the fullest attainment of health.

Informed opinion and active co-operation on the part of the public are of the utmost importance in the improvement of the health of the people.

Governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures.

ACCEPTING THESE PRINCIPLES, and for the purpose of co-operation among themselves and with others to promote and protect the health of all peoples, the contracting parties agree to the present Constitution and hereby establish the World Health Organization as a specialized agency within the term of Article 57 of the Charter of the United Nations.

NUREMBERG PRINCIPLES

Basic principles to satisfy moral, ethical and legal concepts for permissible medical experiments. From the Judgment of the War Crimes Court (Military Tribunal No. 1) rendered by Judges Walter B. Beals, Harold L. Sebring and Johnson T. Crawford, on 19 August 1947 (7, pp. 181 and 182).

1. The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision. This latter element requires that before

the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconvenience and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment.

The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.

2. The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature.

3. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment.

4. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.

5. No experiment should be conducted where there is an a priori reason to believe that death or disabling injury will occur; except, perhaps, in those experiments where the experimental physicians also serve as subjects.

6. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.

7. Proper preparations should be made and adequate facilities provided to protect

the experimental subject against even remote possibilities of injury, disability or death.

8. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.

9. During the course of the experiment, the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible.

10. During the course of the experiment, the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill and careful judgment required of him, that a continuation of the experiment is

likely to result in injury, disability or death to the experimental subject.

15 USC § 52. False advertising; dissemination prohibited

(a) Unlawfullness. It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement --

(1) By United States mails, or in or having an effect upon commerce, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of foods, drugs, devices or cosmetics; or

(2) By any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in or having an effect upon commerce of foods, drugs, devices, or cosmetics.

(b) Unfair or deceptive act or practice. The dissemination or the causing to be disseminated of any false advertisement within the provision of subsection (a) of this section shall be unfair or deceptive

act of practice in or affecting commerce within the meaning of section 5[15 USCS § 45].

15 USC § 55. Additional definitions. For the purposes of sections 12, 13 and 14 [15 USCS §§ 52, 53, 54] --

(a) False advertisement. (1) The term "false advertisement" means an advertisement, other than labeling, which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may

result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual. No advertisement of a drug shall be deemed to be false if it is disseminated only to members of the medical profession, contains no false representation of a material fact, and includes, or is accompanied in each instance by truthful disclosure of, the formula showing quantitatively each ingredient of such drug.

(b) Food. The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(c) Drug. The term "drug" means (1) articles recognized in the official United

States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories.

15 USC § 1261. Definitions.

For the purposes of this Act --

(f) The term "hazardous substance" means:

1. (A) Any substance or mixture of substances which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates

pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

2. The term "hazardous substance" shall not apply to pesticides subject to the Federal Insecticide, Fungicide, and Rodenticide Act [7 USCS §§ 135 et seq.], nor to foods, drugs and cosmetics subject to the Federal Food, Drug, and Cosmetic Act [21 USCS §§ 301 et seq.], nor to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house, but such term shall apply to any article which is not itself a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act [7

USCS §§ 135 et seq.] but which is a hazardous substance within the meaning of subparagraph 1 of this paragraph by reason of bearing or containing such a pesticide.

(g) The term "toxic" shall apply to any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.

(i) The term "corrosive" means any substance which in contact with living tissue will cause destruction of tissue by chemical action; but shall not refer to action on inanimate surfaces.

(j) The term "irritant" means any substance not corrosive within the meaning of subparagraph (i) which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(k) The term "strong sensitizer" means a substance which will cause on normal living tissue through an allergic or photodynamic process a hypersensitivity which becomes evident on reapplication of the same substance and which is designated as such by the Secretary. Before designating any substance as a strong sensitizer, the Secretary, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersenitivity.

(l) The term "extremely flammable" shall apply to any substance which has a flash point at or below twenty degrees Fahrenheit as determined by the Tagliabue Open Cup Tester, the term "flammable" shall apply to any substance which has a flash point of above twenty degrees to and including eighty degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester, and the term

"combustible" shall apply to any substance which has a flash point above eighty degrees Fahrenheit to and including one hundred and fifty degrees, as determined by the Tagliabue Open Cup Tester; except that the flammability or combustibility of solids and of the contents of self-pressurized containers shall be determined by methods found by the Secretary to be generally applicable to such materials or containers, respectively, and established by regulations issued by him, which regulations shall also define the terms "flammable," "combustible," and "extremely flammable" in accord with such methods.

(n) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a

display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto; and a requirement made by or under authority of this Act that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears (1) on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper and (2) on all accompanying literature where there are directions for use, written or otherwise.

(o) The term "immediate container" does not include package liners.

(p) The term "misbranded hazardous substance" means a hazardous substance (including a toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be

susceptible of access by a child to whom such toy or other article is entrusted) intended, or packaged in a form suitable, for use in the household or by children, if the packaging or labeling of such substance is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970 [15 USCS §§ 1472 or 1473] or if such substance, except as otherwise provided by or pursuant to section 3 [15 USCS § 1262], fails to bear a label --

(1) which states conspicuously (A) the name and place of business of the manufacturer, packer, distributor or seller; (B) the common or usual name or the chemical name (if there be no common or usual name) of the hazardous substance or of each component which contributes substantially to its hazard, unless the Secretary by regulation permits or requires the

use of a recognized generic name; (C) the signal word "DANGER" on substances which are extremely flammable, corrosive, or highly toxic; (D) the signal word "WARNING" or "CAUTION" on all other hazardous substances; (E) an affirmative statement of the principal hazard or hazards, such as "Flammable," "Combustible," "Vapor Harmful," "Causes Burns," "Absorbed Through Skin," or similar wording descriptive of the hazard; (F) precautionary measures describing the action to be followed or avoided, except when modified by regulation of the Secretary pursuant to section 3 [15 USCS § 1262]; (G) instruction, when necessary or appropriate, for first-aid treatment; (H) the word "poison" for any hazardous substance which is defined as "highly toxic" by subsection (h); (I) instructions for

handling and storage of packages which require special care in handling or storage; and (J) the statement (i) "Keep out of the reach of children" or its practical equivalent, or, (ii) if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard, and

(2) on which any statements required under subparagraph (1) of this paragraph are located prominently and are in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.

The term "misbranded hazardous substance" also includes a household substance as defined in section 2(2)(D) of the Poison Prevention Packaging Act of 1970 [15 USCS § 1471(2)(D)] if it is a substance described

in paragraph 1 of section 2(f) of this Act [subsec. (f) of this section] and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970 [15 USCS § 1472 or 1473].

21 USC § 321. Definitions; generally

For the purposes of this chapter --

(f) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(g) (1) The term "drug" means (A) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and

(C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (D) articles intended for use as a component of any article specified in clauses (A), (B), or (C) of this paragraph; but does not include devices or their components, parts, or accessories.

(j) The term "official compendium" means the official United States Pharmacopoeia, official Homoepathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

(k) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless

such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(m) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.

(n) If an article is alleged to be misbranded because the labeling is misleading, then in determining whether the labeling is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling fails to reveal facts

material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling relates under the conditions of use prescribed in the labeling thereof or under such conditions of use as are customary or usual.

21 USC § 331. Prohibited acts

The following acts and the causing thereof are hereby prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, or cosmetic in interstate commerce.

(c) The receipt in interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

21 USC § 343. Misbranded food.

A food shall be deemed to be misbranded --

(a) False or misleading label. If its labeling is false or misleading in any particular.

(f) Prominence of information on label. If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read an understood by the ordinary individual under customary conditions of purchase and use.

21 USC § 352. Misbranded drugs and devices

A drug or device shall be deemed to be misbranded --

(a) False or misleading label. If its labeling is false or misleading in any particular.

(c) Prominence of information on label. If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read an understood by the ordinary individual under customary conditions of purchase and use.

(f) Directions for use and warnings on label. Unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe

dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: Provided, That where any requirement of clause (1) of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the Secretary shall promulgate regulations exempting such drug or device from such requirement.

21 USCS § 371.

(d) Effectiveness of definitions and standards of identity. The definitions and standards of identity promulgated in accordance with the provisions of this Act shall be effective for the purposes of the enforcement of this Act, notwithstanding such definitions and standards as may be contained in other laws of the United States and regulations promulgated thereunder.

27 USC § 205. Unfair competition and unlawful practices.

It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate.

(e) Labeling

To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Secretary of the Treasury, with respect to packaging, marking, branding, and labeling and size

and fill of container (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Secretary of the Treasury finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are prohibited unless required by State law and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), the net contents of the package, and the manufacturer or bottler or importer

of the product; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements on the label that are disparaging of a competitor's products or are false, misleading. obscene, or indecent; and (5) as will prevent deception of the consumer by use of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a

name that is in simulation or is an abbreviation thereof, and as will prevent the use of a graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been indorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization:

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, except pursuant to regulations of the Secretary of the Treasury authorizing relabeling for purposes of compliance with the requirements of this subsection or of State law.

(f) Advertising

To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical or other publication or by any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of distilled spirits, wine, or malt beverages, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with such regulations, to be prescribed by the Secretary of the Treasury, (1) as will prevent deception of the consumer with respect to the products advertised and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guaranties, and scientific of irrelevant

matters as the Secretary of the Treasury finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products advertised, the alcoholic content thereof (except the statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages and wines are prohibited), and the person responsible for the advertisement; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin

produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; (5) as will prevent statements inconsistent with any statement on the labeling of the products advertised.

The provisions of subsection (a), (b), and (c) of this section shall not apply to any act done by an agency of a State or political subdivision thereof, or by any officer or employee of such agency.

42 USC § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation

of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 USC § 1985

(3) Depriving persons of rights or privilages. If two or more persons in any State or Territory conspire, . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws . . . if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned

by such injury or deprivation, against any one or more of the conspirators.

(R. S. § 1980.)

21 C.F.R.

Under 21 C.F.R. Section 201.5 the Food and Drug Administration has promulgated the following regulations describing adequate directions for use which must appear on alcoholic beverage packages:

"'Adequate directions for use' means directions under which the layman can use a drug safely and for the purposes for which it is intended. (Section 201.128 defines 'intended use'). Directions for use may be inadequate because among other reasons, of ommission, in whole or in part, or incorrect specification of:

a) Statements of all conditions, purposes, or uses for which such drug is intended, including conditions, purposes, or uses for which it is prescribed, recommended, or suggested in its oral, written,

printed, or graphic advertising, and conditions, purposes, or uses for which the drug is commonly used; except that such statements shall not refer to conditions, uses, or purposes for which the drug can be safely used only under the supervision of a practitioner licensed by law and for which it is advertised solely to such practitioner.

b) Quantity of dose, including usual guantities for each of the uses for which it is intended and usual quantities for persons of different ages and different physical conditions.

c) Frequency of administration or application.

d) Duration of administration or application.

e) Time of administration or application (in relation to time of meals, time of onset of symptons, or other time factors).

f) Route or method administration or application.

g) Preparation for use, i.e., shaking, dilution, adjustment of temperature, or, other manipulation or process."

By way of further requirements applicable to both foods and drugs the complaints allege labeling of alcholic beverages shall be deemed to be misbranded if such labels fail to reveal facts that are:

i) material in light of other representations made or suggested by statement, word, design, device or any combination thereof; or

ii) material with respect to consequences which may result from the use of the article under (1) the conditions prescribed in such labeling or (2) such conditions as are customary or usual. 21 C.F.R. 1.21.

RCW 4.92.010 Where brought--Cost bond--Change of venue

Any person or corporation having any claim against the state of Washington shall have a right of action against the state in the superior court.

The venue for such actions shall be as follows:

(1) The county of the residence or principal place of business of one or more of the plaintiffs;

(2) The county where the cause of action arose;

(4) The county where the action may be properly commenced by reason of the joinder of an additional defendant; or

(5) Thurston county.

Actions shall be subject to change of venue in accordance with statute, rules of court, and the common law as the same now

exist or may hereafter be amended, adopted, or altered.

Actions shall be tried in the county in which they have been commenced in the absence of a seasonable motion by or in behalf of the state to change the venue of the action.

RCW 4.92.090 Tortious conduct of state--Liability for damages

The state of Washington, whether acting in its governmental or proprietary cpacity, shall be liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation.

4.96.010 Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations--Liability for damages

All political subdivisions, municipal corporations, and quasi municipal corporations of the state, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their

tortious conduct, or the tortious conduct of their officers, agents or employees to the same extent as if they were a private person or corporation: Provided, That the filing within the time allowed by law of any claim required shall be a condition precedent to the maintaining of any action. The laws specifying the content for such claims shall be liberally construed so that substantial compliance therewith will be deemed satisfactory.

RCW 9.04.050 False, misleading, deceptive advertising. It shall be unlawful for any person to publish, disseminate or display, or cause directly or indirectly, to be published, disseminated or displayed in any manner or by any means, including solicitation or dissemination by mail, telephone or door-to-door contacts, any false, deceptive or misleading advertising, with knowledge of the facts which render the advertising

false, deceptive or misleading, for any business, trade or commercial purpose or for the purpose of inducing, or which is likely to induce, directly or indirectly, the public to purchase, consume, lease, dispose of, utilize or sell any property or service, or to enter into any obligation or transaction relating thereto: . . .

RCW 9.04.060 False, misleading, deceptive Advertising--Action to restrain and prevent. The attorney general or the prosecuting attorneys of the several counties may bring an action in the superior court to restrain and prevent any person from violating any provision of RCW 9.04.050 through 9.04.080.

RCW 9.04.070 False, misleading, deceptive advertising--Penalty--Other remedies and penalties not applicable. Any person who violates any order or injunction issued pursuant to RCW 9.04.050 through 9.04.080 shall be subject to a fine of not more than

five thousand dollars or imprisonment for not more than ninety days or both.

RCW 9.66.010 Public nuisance. A public nuisance is a crime against the order and economy of the state. Every place

. . . .

(2) Wherein any intoxicating liquors are kept for unlawful use, sale or distribution; or,

. . . and

Every act unlawfully done and every omission to perform a duty, which act or omission

(1) Shall annoy, injure, or endanger the safety, health, comfort, or repose of any considerable number of persons; or,

. . . .

(4) Shall in any way render a considerable number of persons insecure in life or the use of property;

Shall be a public nuisance.

RCW 36.28.010 General duties. The sheriff is the chief executive officer and conservator of the peace of the county. In the execution of his office, he and his deputies:

(1) Shall arrest and commit to prison all persons who break the peace, or attempt to break it, and all persons guilty of public offenses;

(2) Shall defend the county against those who, by riot or otherwise, endanger the public peace or safety;

. . . .

RCW 36.28.011 Duty to make complaint. In addition to the duties contained in RCW 36.28.010, it shall be the duty of all sheriffs to make complaint of all violations of the criminal law, which shall come to their knowledge, within their respective jurisdictions.

RCW 66.08.010 Title liberally construed. This entire title shall be deemed an

exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose.

RCW 66.08.030 Regulations--Scope. (1) For the purpose of carrying into effect the provisons of this title according to their true intent or of supplying any deficiency therein, the board may make such regulations not inconsistent with the spirit of this title as are deemed necessary or advisable. All regulations so made shall be a public record and filed in the office of the secretary of state, together with a copy of this title, shall forthwith be published in pamphlets, which pamphlets shall be distributed free at all liquor stores and as otherwise directed by the board, and thereupon shall have the same

force and effect as if incorporated in this title.

(2) Without thereby limiting the generality of the provisions contained in subsection (1) it is declared that the power of the board to make regulations in the manner set out in that subsection shall extend to

. . . . .

(n) prescribing the kinds and quantities of liquor for for which a prescription may be given, and the number of prescriptions which may be given to the same patient within a stated period;

. . . .

(y) prescribing methods of manufacture, conditions of sanitation, standards of ingredients, quality and identity of alcoholic beverages manufactured, sold, bottled, or handled by licensees and the board;

and conducting from time to time, in the interest of the public health and general welfare, scientific studies and research relating to alcoholic beverages and the use and effect thereof;

. . . .

66.08.100 Jurisdiction of action against board--Immunity from personal liability of members. No court of the state of Washington other than the superior court of Thurston county shall have jurisdiction over any action or proceeding against the board or any member thereof for anything done or omitted to be done in or arising out of the performance of his or their duties under this title. Neither the board nor any member or members thereof shall be personally liable in any action at law for damages sustained by any person becasue of any acts performed or done or omitted to be done by the board or any

employee of the board in the performance of his duties and in the administration of this title.

RCW 69.04.006 "Food". The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

RCW 69.04.009 "Drugs". The term "drug" means (1) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure of any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in

clause (1), (2), or (3); but does not include devices or their components, parts, or accessories.

RCW 69.04.013 "Label". The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

RCW 60.04.015 "Labeling". The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.

RCW 69.04.016 "Misleading labeling or advertisement", how determined. If any article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is midleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual. [Emphasis added]

RCW 69.04.040 Prohibited acts. The following acts and the causing thereof are hereby prohibited:

(1) The sale in intrastate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

(2) The adulteration or misbranding of any food, drug, device, or cosmetic in intrastate commerce.

(3) The receipt in intrastate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the sale thereof in such commerce for pay or otherwise.

(4) The introduction or delivery for introduction into intrastate commerce of (a) any food in violation of RCW 69.04.350; or (b) any new drug in violation of RCW 69.04.570.

(5) The dissemination within this state, in any manner or by any means or

through any medium, of any false advertisement.

RCW 69.04.250 Food--Misbranding by false label, etc. A food shall be deemed to be misbranded (1) if its labeling is false or misleading in any particular; . . . .

RCW 69.04.450 Drugs--Misbranding by false labeling. A drug or device shall be deemed to be misbranded if its labeling is false or misleading in any particular.

RCW 69.04.470 Drugs--Misbranding by lack of prominent label. A drug or device shall be deemed to be misbranded if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood

by the ordinary individual under customary conditions of purchase and use.

RCW 69.04.480 Drugs--Misbranding for failure to state content of habit forming drug. A drug or device shall be deemed to be misbranded if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha eucaine, barbiric acid, beta eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, or sulphomethane; or any chemical derivative of such substance, which dderivative has been designated as habit forming by regulations promulgated under section 502(d) of the federal act; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning--May be habit forming." [Emphasis added]

RCW 69.04.500 Drugs--Misbranding by failure to give directions for use and warnings. A drug or device shall be deemed to be misbranded unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: Provided, That where any requirement of clause (1) of this section as applied to any drug or device, is not necessary for the protection of the public health, the director shall promulgate regulations exempting such drug or device from such requirements. Such regulations shall include the exemptions prescribed under section 502(f)(1) of the federal act, insofar as such exemptions are applicable hereunder. [Emphasis added]

RCW 69.04.510 Drugs--Misbranding for improper packaging and labeling. A drug or device shall be deemed to be misbranded if it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: Provided, That the method of packing may be modified with the consent of the director, as permitted under section 502(g) of the federal act. Whenever a drug is recognized in both the United States pharmacopoeia, and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States, and not to those of the United States pharmacopoeia.

RCW 60.04.530 Drugs--Misbranding by misleading representation. A drug shall be deemed to be misbranded if (1) its container is so made, formed, or filled as to be misleading; or . . . (4) if it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

WAC 314-16-120 Conduct on licensed premises. (Rule 27). (1) No licensee, or employee thereof, shall be disorderly, boisterous or intoxicated on the licensed premises, or on any public premises adjacent thereto which are under the licensee's control, nor shall any licensee, or employee thereof, permit any disorderly, boisterour or intoxicated person to be thereon; nor shall any licensee, or employee thereof, use or allow the use of profane or vulgar language thereon.

(2) No licensee, or employee thereof shall consume liquor of any kind while working on the licensed premises. (See WAC 314-16-050, Closing Hours.) [Order 53, § 314-16-120, filed 2/15/77, effective 3/18/77; Rule 27, filed 6/13/63.]

WAC 314-20-100 (5) Quantity discounts are prohibited. No price shall be posted which is below "cost", or below "cost of doing business", or a "loss leader", as those terms are defined in Chapter 19.90 RCW Unfair Practices Act, except as otherwise provided in such act.

(6) Wholesale prices on a "close-out" item shall be accepted by the board if in compliance with Chapter 19.90 RCW. . . ."

WAC 314-52-015

"All liquor advertising shall be in good taste and shall not contain:

(1) any statement or illustration that is false or misleading in any material particular.

(8) any statement, design or device representing that the use of liquor has curative or therapeutic effects, if such statement is untrue in any particular, or tends to create a misleading impression.

(11) any statement, picture, or illustration implying that the consumption of liquor enhances athletic prowess, or any statement, picture, or illustration referring to any known athlete, if such statement, picture or illustration implies, or if the reader may reasonably infer, that the use of liquor contributed to such known athlete's athletic achievements.

(12) any statement, design, device, or illustration primarily appealing to minors; or depicts any minor (except as incidental to an event which children would normally attend).

(13) any picture or illustration of a woman which is immodest, undignified, and in bad taste."

WAC 314-52-112 states in pertinent part:

(4) That beer or wine shall not be advertised, offered for sale or sold at less than cost or as a loss leader except as permitted under the Unfair Practices Act, Chapter 19.90 RCW.

C-1

No. 46092
No. 46242

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

EDWARD D. CAMPBELL
Appellant,

vs.

STATE OF WASHINGTON AND KING COUNTY
Respondents.

APPELLANT'S SPECIAL RESPONSE REPLY BRIEF TO BRIEF OF RESPONDENT, KING COUNTY

EDWARD D. CAMPBELL
Pro Se

EDWARD D. CAMPBELL
3015 N.W. Market No. 308
Seattle, WA 98107

Phone (206) 783-3410

I N D E X

Page

I. WHAT REALLY HAPPENED IN KING COUNTY 1

II. GRANTING IMMUNITY TO PUBLIC OFFICIALS VIOLATES ARTICLE I §§ 9 & 10 OF THE UNITED STATES CONSTITUTION UNLESS SPECIFICALLY AUTHORIZED THEREIN 3

III. KING COUNTY COMPARISONS MIS-LEADING 33

IV. CLOSING THOUGHTS 34

TABLES OF AUTHORITY

Table of Cases

Application of Green, 283 NYS 2d 247, 54 Misc. 2d 607 (1967). 29

Application of Jama, 272 NYS 2d 677, 51 Misc. 2d 9 (1966) 29

Downes v. Bidwell, 182 U.S.244, 277, 45 L.Ed 1088, 1102, 21 S.Ct. 770 (1901) 29

Entick v. Carrington, State Trials XIX: 1029 (1765) 16

Eskra v. Morton, 524 F.2d 9 (7th Cir. (1975) 3

Gompers v. United States, 233 U.S. 604, 58 L.Ed 1115, 34 S.Ct. 693 (1913). 32

Horst v. Moses, 48 Ala 129 (1872) app. den. 15 Wal 387, 21 L.Ed 176 . . . 29

The Legal Tender Case, Julliard v. Greenman, 110 U.S. 421, 28 L.Ed 204, 4 S.Ct. 122 (1884) 29

Merry v. Collins, FSC, 6-60 (WFN: n.51 p. 190) 15

Respublica v. Chapman, 1 Dallas (Penn) 56 (1781). 25

Respublica v. Sweers, 1 Dallas (Penn) 41 (1779). 25

Society Vincole De. Champagne v. Mumm, 143 F.2d 240, 62 Q.S.P.Q. 2 (2nd Cir. 1944) 28

State v. Colon, 65 Conn 478, 33 A. 519 31 L.R.A. 55, 48 Am.St.Rep. 227 (1895) 25

Texas v. White, 74 U.S. 700, 19 L.Ed 227 (1869) 25

United States v. Classic, 313 U.S. 299, 85 L.Ed 1368, 61 S.Ct. 1031, reh. den. 314 U.S. 707, 86 L.Ed 565, 62 S.Ct 51 (1940) 32

Constitutional Provisions

Articles of Confederation 4,5,6

U.S. Constitution Art I § 9 3,6,29

U.S. Constitution Art. I § 10 3,6,27,28,32

U.S. Constitution Art I § 6 23,26

Alabama Constitution Art I § 32 . . . 29

Maryland Constitution of 1776 Art XL 6

New Hampshire Constitution of 1784 Art. IX and X 6

Pennsylvania Constitution of 1790 . . 6

South Carolina Constitution of 1790 Art. IX § 5 6

Vermont Constitution of 1777 Art. VI and XXXIII 6

Statutes

Chapter 66 RCW 34,35

RCW 66.08.010 35

Chapter 69.04 RCW 34,35

World Health Organization Treaty. . . 34

29 U.S.C. § 794 34

24 Geo 2 c44 . . . . . .16.17

1 & 2 Victoria c110 § 1 (1838). . . . 21

Other Authorities

45 CFR Part 84 34

ACC American Charters, Constitutions and Organic Laws 1492-1908, Francis Newton Thorp, ed (1909) 6

AFT Albion's Fatal Tree, Crime and Society in Eighteenth-Century England, Douglas Hay, Peter Linebaugh, John G. Rule, F.P. Thompson and Cal Winslow, Pantheon Books 1975 Property, Authority and Criminal Law 19

Am.L.J. American Law Journal 2:51 (1809) 3

Am.J.L.H. American Journal of Legal History Freedom of Peers from Arrest by M.A.R. Graves XXI: 1 (1977) . . 19

AST A.S. Turberville, The House of Lords in the Eighteenth Century, Greenwood Press (1970) reprint of 1927 Clarendon ed. 21

CCW Corinne Comstock Weston, English Constitutional Theory and the House of Lords 1556-1832, Ams Press N.Y. 1965 31

CMK Cecelia M. Kenyon, ed. The Anti-Federalist, American Heritage Series Bobbs-Merril Co. 1966. . . 21

DIF Documents Illustrative of the Formation of the Union of American States, GPO 1927, 69th Congress, House Document No. 398 13
Declaration of Independence . . . 13

DLJ David L. Jacobson, ed English Libertarian Heritage, From the Writings of John Trenchard and Thomas Gordon in the Independent Whig and Cato's Letters, American Heritage Series, Bobbs-Merril Co. 1965 12
What Measures are actually taken by wicked and despearate Ministers to ruin and enslave their Countrymen 12

DMW Don M. Wolf, ed. Leveller Manifestoes of the Puritan Revolution, Humanities Press, 1967. 7,8,9
Aggitators Proposals for 4 Regiments of Horse and 7 of Foot. . . 8
Agreement of the Free People of England 8
First Agreement Nov. 3, 1947 8
Second Agreement (The Foundations of Freedom) Dec. 15-22, 1648 8
Third Agreement May 1, 1649. . 8
Petition from Lord Fairfax and the General Councel and Officers of the Army, July 23, 1649 . . 7
A Remonstrance of Many Thousands of Citizens, Richard Overton 1646 9
Certain Articles for the Good of the Commonwealth, Richard Overton July 17 1647 8
Petition to the Commons of England, William Walwyn, Sept. 1648. . . . 9
The Case of the Army Truly Stated Oct. 15, 1647 9

FD	Elliot's Debates, Debates in the Several State Conventions on the Adoption of the Constitution, Washington 1836	22
F&M	Empire and Nation, Letters from a Farmer in Pennsylvania by John Dickinson and Letters from a Federal Farmer, by Richard Henry Lee, Printice Hall, 1962	5
FP	The Federalist Papers, Oliver G.H. Leigh, ed. Washington 1901	6,24
FWM	F.W. Maitland, The Constitutional History of England, Cambridge U. Pr. U.K. 1974.	20
GBC	George Bowyer, Commentaries on the Constitutional Law of England 2nd Fd. London 1846.	31
GFM	G.F. Mingay, English Landed Society in the Eighteenth Century, Toronto, 1963	20
JB	Jerome Blum, The End of the Old Order in Rural Europe, Princeton U. Pr. 1978 The Privileges of The Seignors	19
JCC	Journals of Continental Congress	4,5
JLD	J.L. DeLome, The Constitution of England, new edition, London 1807	20
JRC	John Rushworth, Collections, 1721	8
JSC	Joseph Story, Commentaries on the Constitution, 5th Ed. 1891	26

JTT Joel Tiffany, A Treatise on Government and Constitutional Law, 1867 27

LDC Letters of Delegates to Congress 1774-1789 4,5

LOP Luke Owen Pike, A Constitutional History of the House of Lords, London 1894 (Burt Franklin Research and Source Works Series No. 64) 21

LT The Leveller Tracts, William Haller and Godfrey Davis, ed's. Columbia U. Pr. 1944 8

MB Morton Borden, ed. The Anti-Federalist Papers (1965) 22

MF Max Farrand, ed. The Records of the Federal Convention of 1787, Yale 1911, 1927 (Madison's notes etc.) 22,23,24

N.C.L. Rev North Carolina Law Review 55:541 Kenneth L. Karst, The Fifth Amendment and Guarantee of Equal Protection (1977) . . . 32

N&M Novanglus and Massachusettensis, or Political Essays Published in 1774 and 1775 by John Adams and Jonathan Sewell, Russell & Russell reprint of 1819 first edition 14,15,30

O&C Samuel Peter Orth and Robert Eugene Cushman, American National Government, New York 1932 3

P&L A.P.S. Woodhouse, ed. Puritanism and Liberty, John Dent & Sons, London pap. 1974. . 8

RHP Roy Harvey Pearce, ed. Colonial American Writing, Holt, Rinehart & Winston, 1950 10
The Bloody Tenent Yet More Boldy Roger Williams, 1651 . . . 10

SRG Samuel Rawson Gardner, ed. Constitutional Documents of the Puritan Revolution 1625-1660, 3rd Ed. revised, Oxford U.Pr. G.B. 1968 print. An Act Abolishing the House of Lords 7
The Constitutional Bill of the First Parliament of The Protectorate 31

TAP The Adams Papers, Diary & Autobiography of John Adams, L.H. Butterfield, ed., Atheneum reprint of Harvard U. Pr. 1964, pap 4 Vols. 21

THA The Two Hundredth Anniversary of The First Continental Congress 1774-1974, 93rd Congress, 2nd Sess. House Document No. 93-413 13,14
Address to the People of Great Britian, Oct. 21, 1774 14
Memorial to the Inhabitants of the Colonies, Oct. 24, 1774. . . 13
Petition to the King, Oct. 26, 1774 13

WFN William F. Nelson, Americanization of the Common Law, The Impact of Legal Change on Massachusetts Society, 1760-1830, Harvard U. Pr. 1975 15

WL The Independent Reflector, or Weekly Essays on Sundry Important Subjects More Particularly adapted to the Province of New York, by William Livingston and others, Milton M. Klein ed., Harvard U. Pr. 1963 10
The Vanity of Birth and Titles, with Absurdity of Claiming Respect without Merit, (Sept. 20, 1753) 10

WSH W.S. Holdsworth, History of the English Law, 3rd Edition 1923. . 27

Table 1. Apparent Consumption,[1] of Alcoholic Beverages in U.S. Gallons per Capita of the Drinking-Age Population,[3] U.S.A. by States, 1976

	Distilled Spirits		Wine		Beer		Total Ethanol Volume	Rank Order
	Beverage Volume	Ethanol Volume	Beverage Volume	Ethanol Volume	Beverage Volume	Ethanol Volume		
Alabama	1.99	0.86	1.04	0.15	19.64	0.88	1.89	48
Alaska	5.08	2.18	3.58	0.52	34.83	1.57	4.27	4
Arizona	2.56	1.10	2.64	0.38	36.60	1.65	3.13	12
Arkansas	1.56	0.67	0.86	0.12	19.26	0.87	1.66	51
California	3.11	1.33	4.84	0.70	29.47	1.33	3.36	7
Colorado	3.20	1.37	3.16	0.46	32.48	1.46	3.29	9
Connecticut	2.93	1.26	2.51	0.36	22.72	1.02	2.64	28
Delaware	3.32	1.43	1.72	0.25	27.69	1.25	2.93	18
Florida	3.37	1.45	2.45	0.36	29.65	1.33	3.14	11
Georgia	2.85	1.22	1.16[2]	0.17[2]	21.89	0.98	2.37	35
Hawaii	3.01	1.29	2.95	0.43	33.16	1.49	3.21	10
Idaho	1.86	0.80	1.87	0.27	33.94	1.53	2.60	30
Illinois	3.01	1.29	2.31	0.33	29.12	1.31	2.93	19
Indiana	1.75	0.75	1.00	0.14	24.21	1.09	1.98	43
Iowa	1.81	0.78	0.72	0.10	28.63	1.29	2.17	40
Kansas	1.60	0.69	0.77	0.11	25.04	1.18	1.98	44
Kentucky	1.84	0.79	0.69	0.10	22.60	1.02	1.91	47
Louisiana	2.47	1.06	1.98	0.29	28.53	1.28	2.63	29
Maine	2.50	1.07	1.76	0.25	31.46	1.42	2.74	24
Maryland	3.37	1.45	2.24	0.32	29.50	1.33	3.10	14
Massachusetts	3.04	1.31	2.62	0.38	29.09	1.31	3.00	16
Michigan	2.47	1.06	2.06	0.30	31.81	1.43	2.79	22
Minnesota	2.79	1.20	1.45	0.21	28.92	1.30	2.71	25
Mississippi	2.02	0.87	0.87	0.13	22.75	1.02	2.02	42
Missouri	1.89	0.81	1.37	0.20	26.65	1.20	2.21	38
Montana	2.62	0.97	1.18	0.17	31.01	1.39	2.53	13
Nebraska	2.26	0.97	1.18	0.17	31.01	1.39	2.53	32
Nevada	9.31	4.00	5.89	0.85	45.54	2.05	6.90	1
New Hampshire	7.04	3.03	3.66	0.53	42.43	1.91	5.47	3
New Jersey	2.77	1.19	2.88	0.42	24.09	1.08	2.69	26

	Distilled Spirits		Wine		Beer		Total Ethanol Volume	Rank Order
	Beverage Volume	Ethanol Volume	Beverage Volume	Ethanol Volume	Beverage Volume	Ethanol Volume		
New Mexico	2.28	0.98	2.32	0.34	34.84	1.57	2.89	20
New York	2.89	1.24	3.05	0.44	24.84	1.12	2.80	21
North Carolina	2.02	0.87	1.61[2]	0.23[2]	22.07	0.99	2.09	41
North Dakota	2.80	1.20	1.10	0.16	29.35	1.32	2.68	27
Ohio	1.78	0.76	1.41	0.20	27.55	1.24	2.20	39
Oklahoma	1.81	0.78	0.95	0.14	22.26	1.00	1.92	45
Oregon	2.22	0.95	3.46	0.50	28.84	1.30	2.75	23
Pennsylvania	1.83	0.79	1.54[2]	0.22[2]	29.26	1.32	2.33	36
Rhode Island	2.84	1.22	3.27	0.47	30.83	1.39	3.08	15
South Carolina	2.76	1.19	1.39	0.20	24.80	1.12	2.51	33
South Dakota	2.48	1.07	1.19	0.17	25.16	1.13	2.37	34
Tennessee	1.72	0.74	0.77	0.11	23.77	1.07	1.92	46
Texas	1.90	0.82	1.39	0.20	34.89	1.57	2.59	31
Utah	1.41	0.61	1.04	0.15	20.81	0.94	1.70	50
Vermont	4.11	1.77	3.42	0.50	31.79	1.43	3.70	5
Virginia	2.22	0.95	1.65	0.24	25.13	1.13	2.32	37
Washington	2.59	1.13	3.33	0.48	30.20	1.36	2.97	17
West Virginia	1.91	0.82	0.69	0.10	20.91	0.94	1.86	49
Wisconsin	3.05	1.31	1.87	0.27	40.00	1.80	3.38	6
Wyoming	3.07	1.32	1.45	0.21	40.53	1.82	3.35	8
District of Columbia	8.24	3.54	6.46	0.94	29.61	1.33	5.81	2
Average	2.54	1.09	2.26	0.33	28.09	1.26	2.68	

SOURCE Data updated from Mark Keller and Carol Gurioli, Statistics on Consumption of Alcohol and on Alcoholism, New Brunswick, N.J., Rutgers Center of Alcohol Studies, 1976.

[1]For comparative purposes only. Amounts calculated according to tax paid withdrawals.
[2]Data are from 1975. 1976 data were not available.
[3]Data are based on a drinking-age population 14 years and over.

Table 4. Trends in Alcohol Consumption, 1971-1976

Type of Drinker	Percentage in Each Drinking Category							6 Yr. Average	Ounces of Ethanol Consumed in 1 Day[1]	Amount Consumed[2]
	1971	1972	1973 Spring	1973 Fall	1974	1975	1976			
Abstainer	36	36	34	37	33	36	33	35	0	Drinks less than once a year or never
Lighter	34	32	29	30	28	31	38	32	0.01-0.21	One drink a year up to 3 drinks/ week or 12 drinks/ month
Moderate	20	23	23	21	28	21	19	22	0.22-0.99	4 to 13 drinks/ week or 13 to 58 drinks/ month
Heavier	10	10	14	11	11	12	10	11	1.0 or more	2 or more drinks/ day or 14 or more drinks/ week
	1971	1972	1973 Spring	1973 Fall	1974	1975	1976	6 Yr. Average		
(N)	(2.195)	(1.544)	(1.588)	(1.603)	(1.578)	(1.071)	(2.510)	(12.090)		

SOURCE Paula Johnson, David Armor, Susan Polich, and Harriet Stambul, U.S. adult drinking practices. Time trends, social correlates, and sex roles Draft report prepared for National Institute on Alcohol Abuse and Alcoholism under Contract No. ADM 281-76-0020 July 1977.

[1]The measure is derived from the frequency of drinking each type of beverage (beer, wine and distilled spirits) expressed in number of occasions per day multiplied by the amount of ethanol consumed on a typical drinking day (assuming ethanol proportions of 0.04 for beer, 0.15 for wine and 0.45 for distilled spirits).

[2]A drink is the equivalent of one 12-oz. can of beer, one 4-oz. glass of wine, or one 1-oz. shot of distilled spirits, each of which contains approximately 1/2 oz. of ethanol.

Table 5. Estimated Deaths Related to Alcohol in the United States, 1975

Cause of Death	Number of Deaths 1975	Percent Related to Alcohol	Estimated Number Related to Alcohol
Alcohol as a direct cause			
Alcoholism	4,897	100	4,897
Alcoholic psychosis	356	100	356
Cirrhosis	31,623	41-95	12,965-30,042
Total	36,876		18,218-35,295
Alcohol as an indirect cause			
Accidents			
Motor Vehicle	45,853	30-50	13,756-22,926
Falls	14,896	44.4	6,614
Fires	6,071	25.9	1,572
Other*	33,026	11.1	3,666
Homicides	21,310	49-70	10,442-14,917
Suicides	27,063	25-37	6,766-10,013
Total	148,219	29-40	42,816-59,708
Overall Total	185,095		61,034-95,003

SOURCE: Data from Nancy Day, Alcohol and Mortality. Paper prepared for National Institute on Alcohol Abuse and Alcoholism under Contract No. NIA-76-10(P). January, 1977; and National Center for Health Statistics, Vital Statistics of the United States, 1972, Vol. II: Washington, D.C.: U.S. Government Printing Office, 1975.

*Includes all accidents not listed above; but excludes accidents incurred in medical and surgical procedures.

Table 6. Rates of Problem Drinking Among U.S. Drinkers, by Drinking Population, 1973-1975

Drinking Population	Percentages for Each Survey			
	Mar. 1973	Jan. 1974	Jan. 1975	June 1975
All Drinkers				
No problems	64	70	65	63
Potential problems[1]	26	24	24	26
Problem drinkers[2]	11	6	10	10
Males				
No problems	57	66	62	57
Potential problems[1]	29	27	23	31
Problem drinkers[2]	14	8	15	13
Females				
No problems	74	77	70	73
Potential problems[1]	21	19	27	21
Problem drinkers[2]	5	4	3	6

SOURCE: Paula Johnson, David Armor, Susan Polich, and Harriet Stambul, U.S. adult drinking practices: Time trends, social correlates, and sex roles. Draft report prepared for National Institute on Alcohol Abuse and Alcoholism under Contract No. ADM 281-76-0020, July, 1977.

[1]A potential problem drinker experienced two or three of sixteen problem drinking symptoms frequently or four to seven symptoms sometimes.

[2]A problem drinker experienced four or more of sixteen problem drinking symptoms frequently or eight or more symptoms sometimes.

Table 7. Economic Costs of Alcohol Misuse and Alcoholism in the United States, 1975

Item	Cost (billion $)
Lost production	19.64
Health and medical	12.74
Motor vehicle accidents	5.14
Violent crime	2.86
Social responses	1.94
Fire losses	0.43
Total	$42.75

SOURCE: Ralph Berry, James Boland, Charles Smart and James Kanak, The Economic Costs of Alcohol Abuse and Alcoholism--1975, Report prepared for National Institute on Alcohol Abuse and Alcoholism

281-76-0016 1977

Population

No. 30. Population, By Age--States: 1978

(In thousands. Preliminary. As of July 1. Resident population. See Historical Statistics, Colonial Times to 1970, series A 204-209, for decennial census data)

STATE	Total	Under 5 years	5-13 years	14-17 years	18-24 years	25-44 years	45-64 years	65 years and over	18 years and over
U.S.	218,059	15,361	31,378	16,637	28,687	58,097	43,845	24,054	154,682
New Eng	12,256	721	1,729	940	1,605	3,257	2,554	1,451	8,867
Maine	1,091	76	161	87	138	274	223	133	767
N.H.	871	58	128	69	109	242	160	96	616
Vt	487	34	73	38	65	134	88	55	342
Mass	5,774	326	802	440	778	1,530	1,198	700	4,206
R.I.	936	54	132	70	121	236	203	120	680
Conn	3,099	173	433	236	394	841	674	347	2,257
Mid Atl	36,825	2,262	5,144	2,731	4,467	9,649	8,193	4,380	26,689
N.Y.	17,748	1,096	2,486	1,309	2,166	4,724	3,873	2,095	12,858
N.J.	7,327	452	1,044	559	868	1,932	1,648	824	5,272
Pa	11,750	715	1,614	863	1,433	2,993	2,672	1,461	8,558
E No Cent	41,233	2,901	6,144	3,220	5,494	10,988	8,178	4,308	28,968
Ohio	10,749	743	1,594	822	1,429	2,863	2,173	1,125	7,589
Ind	5,374	393	811	420	709	1,434	1,044	564	3,751
Ill	11,243	801	1,641	863	1,464	2,984	2,283	1,206	7,938
Mich	9,189	649	1,420	731	1,263	2,488	1,771	867	6,389
Wis	4,679	315	678	384	629	1,219	907	546	3,301
W No Cent	17,018	1,183	2,393	1,341	2,259	4,393	3,312	2,138	12,102
Minn	4,008	274	584	327	550	1,074	735	463	2,823
Iowa	2,896	198	410	233	361	736	580	378	2,055
Mo	4,860	330	673	369	634	1,264	961	629	3,488
N Dak	652	50	93	55	90	157	128	78	454
S Dak	690	54	98	57	92	160	139	89	480
Nebr	1,565	113	219	124	209	397	301	202	1,109
Kans	2,348	164	315	176	323	605	469	297	1,693

STATE	Total	Under 5 years	5-13 years	14-17 years	18-24 years	25-44 years	45-64 years	65 years and over	18 years and over
S Atl	34,579	2,396	4,913	2,574	4,511	9,227	6,879	3,978	24,696
Del	583	39	85	45	84	159	115	55	413
Md	4,143	252	604	327	579	1,178	834	370	2,960
D.C.	674	41	91	44	101	194	129	73	497
Va	5,148	344	731	394	758	1,439	1,014	468	3,679
W Va	1,860	139	266	135	212	478	408	223	1,321
N.C.	5,577	401	821	417	757	1,538	1,093	550	3,938
S.C.	2,918	233	452	233	410	792	539	258	1,999
Ga	5,084	397	791	390	696	1,413	924	473	3,506
Fla	8,594	549	1,073	589	1,014	2,036	1,823	1,510	6,383
E So Cent	14,001	1,076	2,102	1,092	1,808	3,667	2,713	1,543	8,732
Ky	3,498	267	515	270	456	923	680	388	2,447
Tenn	4,357	312	627	329	554	1,181	876	478	3,089
Ala	3,742	283	563	293	486	975	732	408	2,602
Miss	2,404	213	396	200	312	583	425	269	1,594
W So Cent	22,046	1,787	3,320	1,712	2,951	5,847	4,145	2,285	15,228
Ark	2,186	169	315	168	259	553	428	293	1,533
La	3,966	332	637	331	545	1,029	721	370	2,665
Okla	2,880	215	396	213	370	756	574	357	2,057
Tex	13,014	1,071	1,972	1,000	1,777	3,509	2,422	1,264	8,972
Mt	10,289	912	1,540	816	1,430	2,719	1,906	966	7,021
Mont	785	61	112	66	103	202	159	81	545
Idaho	878	84	132	70	113	224	166	87	591
Wyo	424	37	61	33	57	112	87	36	292
Colo	2,670	205	377	205	396	770	484	232	1,883
N. Mex.	1,212	107	192	106	173	309	222	104	807
Ariz	2,354	205	348	182	306	599	443	269	1,618
Utah	1,307	161	221	102	195	322	205	102	823
Nev	660	50	96	52	87	181	139	55	462
Pac	29,811	2,124	4,094	2,214	4,058	8,351	5,964	3,005	21,379
Wash	3,774	263	528	288	508	1,064	721	401	2,694
Oreg	2,444	178	331	180	307	670	493	285	1,755
Calif	22,294	1,568	3,034	1,643	3,026	6,258	4,522	2,243	16,049
Alaska	403	41	69	35	74	117	57	10	258
Hawaii	897	75	132	68	143	242	171	66	622

Source: U.S. Bureau of the Census, Current Population Reports, series P-25, forthcoming report.

Population

No. 30. Population, By Age--States: 1978

	Percent		
	Under 5 years	5-17 years	65 years and over
U.S.	7.0	22.0	11.0
New Eng	5.9	21.8	11.8
Maine	7.0	22.7	12.2
N.H.	6.7	22.6	11.0
Vt	7.0	22.8	11.3
Mass	5.6	21.5	12.1
R.I.	5.8	21.6	12.8
Conn	5.6	21.6	11.2
Mid Atl	6.1	21.4	11.9
N.Y.	6.2	21.4	11.8
N.J.	6.2	21.9	11.2
Pa	6.1	21.1	12.4
E No Cont	7.0	22.7	10.4
Ohio	6.9	22.5	10.5
Ind	7.3	22.9	10.5
Ill	7.1	22.3	10.7
Mich	7.1	23.4	9.4
Wis	6.7	22.7	11.7
W No Cont	7.0	21.9	12.6
Minn	6.8	22.7	11.6
Iowa	6.8	22.2	13.1
Mo	6.8	21.4	12.9
N Dak	7.7	22.7	12.0
S Dak	7.8	22.5	12.9
Nebr	7.2	21.9	12.9
Kans	7.0	20.9	12.6

	Percent		
	Under 5 years	5-17 years	65 years and over
S Atl	6.9	21.7	11.5
Del	6.7	22.3	9.4
Md	6.1	22.5	8.9
D.C.	6.1	20.0	10.8
Va	6.7	21.9	9.1
W Va	7.5	21.6	12.0
N.C.	7.2	22.2	9.9
S.C.	8.0	23.5	8.8
Ga	7.8	23.2	9.3
Fla	6.4	19.3	17.6
E So Cont	7.7	22.8	11.0
Ky	7.6	22.4	11.1
Tenn	7.2	21.9	11.0
Ala	7.6	22.9	10.9
Miss	8.9	24.8	11.2
W So Cont	8.1	22.8	10.4
Ark	7.7	22.1	13.4
La	8.4	24.4	9.3
Okla	7.5	21.1	12.4
Tex	8.2	22.8	9.7
Mt	8.9	22.9	9.4
Mont	7.8	22.7	10.3
Idaho	9.6	23.0	9.9
Wyo	8.7	22.2	8.5
Colo	7.7	21.8	8.7
N. Mex.	8.8	24.6	8.6
Ariz	8.7	22.5	11.4
Utah	12.3	24.7	7.8
Nev	7.6	22.4	8.3
Pac	7.1	21.2	10.1
Wash	7.0	21.6	10.6
Oreg	7.3	20.9	11.7
Calif	7.0	21.0	10.1
Alaska	10.2	25.8	2.5
Hawaii	8.4	22.3	7.4

No. 480. All Governments--Revenue and Expenditure, by Level of Government: 1977
(Local government amounts are estimates subject to sampling variation; see source. See also Historical Statistics, Colonial Times to 1970, series Y 505-637 and Y 652-848)

SOURCE OF REVENUE AND TYPE OF EXPENDITURE	All Governments (mil. dol.)	Federal (mil. dol.)	State (mil. dol.)	local (mil. dol.)	PERCENT Federal	PERCENT State and local[2]
Revenue	657,321	383,524	204,475	196,321	100.0	100.0
Intergovernmental revenue	(2)	1,375	48,676	76,948	.4	18.5
Revenue from own sources	657,321	382,149	155,799	119,373	99.6	81.5
General revenue from own sources	506,862	283,641	121,191	102,031	74.0	66.1
% of total revenue	77.1	74.0	59.3	52.0	(x)	(x)
Taxes[1]	419,721	243,842	101,085	74,794	63.6	52.1
Property	62,535	(x)	2,260	60,275	(x)	18.5
Individual income	185,970	156,725	25,493	3,752	40.9	8.7
Corporation income	64,066	54,892	9,174	(4)	14.3	2.7
Sales and gross receipts	83,775	23,180	52,362	8,232	6.0	17.9
Customs duties	5,394	5,394	(x)	(x)	1.4	(x)
General sales and gross receipts	36,313	(x)	30,896	5,417	(x)	10.8
Selective sales and gross receipts	42,068	17,786	21,466	2,815	4.6	7.2
Motor fuel	14,067	4,903	9,088	75	1.3	2.7
Alcoholic beverages	7,651	5,387	2,120	144	1.4	.7
Tobacco products	6,031	2,399	3,500	131	.6	1.1
Public utilities	6,941	2,780	2,363	1,798	.7	1.2
Motor vehicle and operators' licenses	4,941	(x)	4,587	354	(x)	1.5
Death and gift	9,132	7,327	1,805	(4)	1.9	.5
Charges and misc. general revenue[3]	87,142	39,799	20,106	27,237	10.4	14.0
Current charges[3]	56,828	25,083	12,768	18,977	6.5	9.4
National defense and international relations	5,362	5,362	(x)	(x)	1.4	(x)
Postal service	12,396	12,396	(x)	(x)	3.2	(x)
Education[3]	10,384	74	6,818	3,492	(z)	3.1
School lunch sales	1,622	(x)	(x)	1,622	(x)	.5
Higher education	7,795	74	6,678	1,043	(z)	2.3
Natural resources	5,165	4,478	557	130	1.2	.2
Hospitals	8,135	43	2,370	5,722	(z)	2.4

Sewerage and sanitation	3,150	(x)	(x)	3,150	(x)	.9
Local parks and recreation	626	(x)	(x)	626	(x)	.2
Housing and urban renewal	1,529	568	44	916	.1	.3
Air transportation	1,263	13	141	1,109	(z)	.4
Water transport and terminals	898	315	168	415	(z)	.2
Special assessments	884	(x)	22	862	(x)	.3
Sale of property	891	569	106	215	.1	(z)
Interest earnings	11,667	4,809	3,475	3,323	1.3	2.0
Utility revenue	14,191	(x)	(x)	14,191	(x)	4.2
Liquor stores revenue	2,612	(x)	2,244	368	(x)	.8
Insurance trust revenue	133,656	98,508	32,365	2,783	25.7	10.4
Expenditure	680,329[2]	431,980	191,238	194,775[2]	100.0	100.0
Intergovernmental expenditure	([2])	73,045	62,460	2,159	16.9	.4
General revenue sharing	6,758	6,758	(x)	(x)	1.6	(x)
Direct expenditure	680,329	358,935	128,778	192,616	83.1	99.6
General expenditure	514,001	240,999	103,535	169,467	55.8	84.6
Percent of total expenditure	75.6	55.8	54.1	87.0	(x)	(x)
Utility expenditure	20,108	(x)	(x)	20,108	(x)	6.2
Liquor stores expenditure	2,143	(x)	1,817	326	(x)	.7
Insurance trust expenditure	144,077	117,936	23,426	2,715	27.3	8.1
By character and object:						
Current operation	366,207	141,966	75,775	148,466	32.9	69.5
Capital outlay	74,893	29,997	16,885	28,011	6.9	13.9
Construction	43,497	7,429	13,712	22,355	1.7	11.2
Equipment	25,857	20,251	1,477	4,129	4.7	1.7
Land and existing structures	5,540	2,317	1,696	1,527	.5	1.0
Assistance and subsidies	48,863	35,760	7,556	5,548	8.3	4.1
Interest on debt	46,288	33,276	5,136	7,876	7.7	4.0
Insurance benefits and repayments	144,077	117,936	23,426	2,715	27.3	8.1
Expenditure for personal services	202,541	77,016[5]	35,780	89,745	17.8	38.9

x Not applicable z Less than $.50 or .05 percent.
[1]Based on estimated resident population as of July 1, 1977.
[2]Aggregates exclude duplicative transactions between levels of government; see source
[3]Includes amounts not shown separately. [4]Minor amount included in individual income tax.
[5]Includes pay and allowances of military personnel.
Source: U.S. Bureau of the Census, Governmental Finances in 1976-77, series GF 77, No. 5

No. 480. All Governments--Revenue and Expenditure, by Level of Government: 1977 (Local government amounts are estimates subject to sampling variation; see source. See also Historical Statistics, Colonial Times to 1970, series Y 505-637 and Y 652-848)

SOURCE OF REVENUE AND TYPE OF EXPENDITURE	PER CAPITA[1] (dol.) Federal	State and local[2]
Revenue	1,773	1,561
Intergovernmental revenue	6	289
Revenue from own sources	1,766	1,272
General revenue from own sources	1,311	1,032
% of total revenue	73.9	66.1
Taxes[1]	1,127	813
Property	(x)	289
Individual income	724	135
Corporation income	254	42
Sales and gross receipts	107	280
Customs duties	25	(x)
General sales and gross receipts	(x)	168
Selective sales and gross receipts	82	112
Motor fuel	23	42
Alcoholic beverages	25	10
Tobacco products	11	17
Public utilities	13	19
Motor vehicle and operators' licenses	(x)	23
Death and gift	34	8
Charges and misc. general revenue[3]	184	219
Current charges[3]	116	147
National defense and international relations	25	(x)
Postal service	57	(x)
Education[3]	(z)	48
School lunch sales	(x)	8
Higher education	(z)	36
Natural resources	21	3
Hospitals	(z)	37

SOURCE OF REVENUE AND TYPE OF EXPENDITURE	PER CAPITA[1] (dol.) Federal	State and local[2]
Sewerage and sanitation	(x)	15
Local parks and recreation	(x)	3
Housing and urban renewal	3	4
Air transportation	(z)	6
Water transport and terminals	1	3
Special assessments	(x)	4
Sale of property	3	1
Interest earnings	23	31
Utility revenue	(x)	66
Liquor stores revenue	(x)	12
Insurance trust revenue	455	162
Expenditure	1,997	1,492[2]
Intergovernmental expenditure	338	6
General revenue sharing	31	(x)
Direct expenditure	1,659	1,486
General expenditure	1,114	1,262
Percent of total expenditure	55.8	84.6
Utility expenditure	(x)	93
Liquor stores expenditure	(x)	10
Insurance trust expenditure	545	121
By character and object:		
Current operation	656	1,037
Capital outlay	139	208
Construction	34	167
Equipment	94	26
Land and existing structures	11	15
Assistance and subsidies	165	61
Interest on debt	154	60
Insurance benefits and repayments	545	121
Expenditure for personal services	356	580

x Not applicable z Less than $.50 or .05 percent. [1]Based on estimated resident population as of July 1, 1977. [2]Aggregates exclude duplicative transactions between levels of government; see source [3]Includes amounts not shown separately. [4]Minor amount included in individual income tax. [5]Includes pay and allowances of military personnel. Source: U.S. Bureau of the Census, Governmental Finances in 1976-77, series GF 77, No. 5

ILLUSTRATIVE SELECTIONS FROM WASHINGTON STATE LIQUOR CONTROL BOARD REPORT OF OPERATIONS

July 1, 1974 through June 30, 1975

The Washington State Liquor Control Board submits its forty-second annual report of operations for the fiscal year ending June 30, 1975. This report is made in accordance with requirements of RCW 66.08.028.

SUMMARY

Liquor Profits

State control of liquor distribution and sales has produced $1.344 billion in profits and taxes since 1934 when the State Liquor Control Board was activated by the Legislature.

Profits from the sale of liquor at state stores and agencies are used to alleviate the tax burden at state, county and city levels. Washington is one of 18 control states where profits from the sale of liquor are retained by the people.

This year $39.7 million in profit from the sale of liquor plus $52.8 million in taxes on liquor reduced the need for some other form of taxation.

Financial Summary For Fiscal Year Ending June 30, 1975		Percentage Increase Over FY 1974
Gross Sales for FY 75	$214,246,860.32	+8.40
Net Profit	$39,647,877.87	+3.74
Sales Tax Collected	$52,836,577.24	+6.82
Total Revenue from WSLCB Operations	$92,484,455.11	+5.48
Total for Distribution State, County and City Governments	$91,853,174.28	+4.53

The annual dollar value of the State Liquor Control system to the taxpayer has almost doubled in the past ten years, from $50.2 million in 1966 to $91.9 million this year. Tax revenue increased from $24.7 million to $52.8 million in those ten years. Profits climbed from $25.5 million in 1966 to $39.7 million in 1975.

On a per capita basis for FY 75 the system "earned" $41.70 for each person 21 years of age and over (2,218,000).

Distribution of Liquor Revenue

A total of $91.9 million in revenue from liquor to the state, counties and cities, helped pay for the cost of education, welfare, pubic health, local fire departments, law enforcement agencies, and other general fund expenditures. That revenue is distributed as follows:

Distributed To	Amount	Percent
State General Fund	$65,083,738.98	70.86
265 Cities	20,181,193.72	21.97
39 Counties	5,071,644.53	5.52
Others:		
DSHS Alcoholism Treatment and Rehabilitation	1,516,597.04	1.65
Total Distribution	$91,853,174.28	100.00

ILLUSTRATIVE SELECTIONS FROM WASHINGTON STATE LIQUOR CONTROL BOARD REPORT OF OPERATIONS

July 1, 1974 through June 30, 1975

Pricing Formula

The retail price of liquor sold at state stores and agencies is determined by five elements:

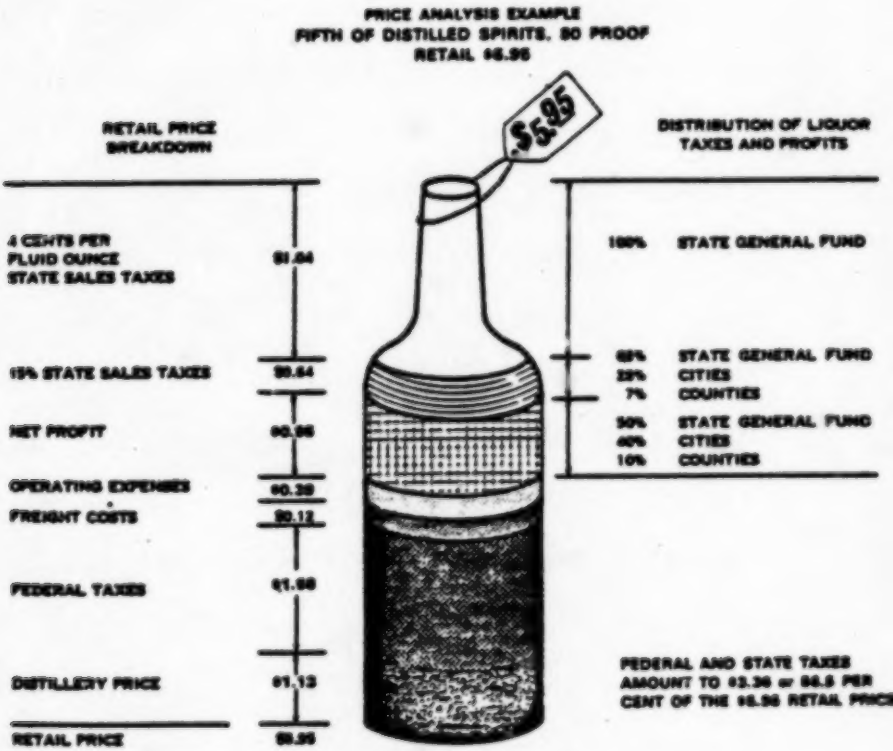
1. Distillers, brewers or vintner's price to the Board.
2. Federal taxes--excise taxes on all liquor, plus custom duty rates on imported liquor.
3. Freight costs to the Board's Seattle Warehouse.

These elements make up the delivered cost to the Board, the base price over which it has no control.

4. Markup is controlled by the Board. Currently, it amounts to 45.9% added to the delivered cost.
5. State sales taxes, set by the

State Legislature, make up the fifth cost item.

The Board's markup is comparable to the sum of the wholesale and retail markup applied by private businesses.



EXCERPTS FROM COMPLAINT

1.020 ALCOHOL AS A TOXIN

As recognized in the Lange standard medical text "Handbook of Poisoning" edited by Robert D. Dreisback, ethanol is a solvent, antiseptic, chemical intermediate and beverage. It can be fatal and can cause both acute and chronic poisoning.

1.030 PRIMARY ACTIONS OF INGESTED ALCOHOL

Alcohol is a stimulant, source of energy, sedative depressant to the central nervous system, caustic, allergenic in some cases, narcotic and addictive in some cases, and anesthetic. It is rapidly absorbed from the gastrointestinal tract or alveoli and is distributed according to the water content of tissues. "It diffuses most quickly into the brain tissues and cerebral spinal fluid, where the concentrations of alcohol may be even higher than in the blood stream." (See Milam, post.).

There is medical evidence that brain cells in the alcoholic adapt and become more proficient in utilizing the energy from alcohol. This may form a physiological basis for the drug dependence for some alcoholics.

5.050 THE NATIONAL SOCIAL COST OF ALCOHOL BEVERAGES

According to the report of Joseph A. Califano, Jr., Secretary of Health, Education and Welfare in the Third Special Report to Congress on Alcohol and Health of June, 1978 (p.vi) in 1975 alcoholism and its related problems cost the United States nearly $43 Billion, including $19.64 Billion in lost production, $12.74 Billion in health and medical costs, $5.14 Billion in motor vehicle accidents, $2.86 Billion in violent crimes, $1.94 Billion in social responses, and $0.43 Billion in fire losses. The people of Washington State, on an average population count, would share

about $800,000,000.00 of those losses for 1975.

6.032 DEATHS RELATED TO ALCOHOL IN 1975

According to the report of Joseph A. Califano, Jr., Secretary of Health, Education and Welfare, in June, 1978, the estimated total number of deaths related to alcohol consumption in the United States in 1975 were from 61,034 to 95,033 (Third Special Report to U.S. Congress on Alcohol and Health, preprint copy o. 10/13). Of these, 18,218 to 35,295 were attributed to alcohol as the direct cause and 42,816 to 59,708 were attributed to alcohol as an indirect cause. Allowing Washington its share at 2%, it would appear that the State of Washington was involved in marketing alcoholic beverages to between 1,220 and 1,900 of those persons whose deaths are related to alcohol in 1975. The volume today is alleged to be in excess of 2,000 a

year. Others go to jail or are institutionalized or join the ranks of the chronically ill or welfare or a combination of these living hells. Califano also reports (p. 21):

> It is estimated that alcohol-related deaths may run as high as 205,000 per year (11 percent of the 1.9 million deaths in 1975). In fact, clinical studies consistently show that various types of alcohol problems in males are associated with mortality rates two to six times higher than rates in the general population.

Mr. Califano also reports that the $12.74 Billion spent in 1975 on health care for alcohol-related problems represented 12.1% of the total adult population health care estimated expenditures in the United States for 1975 (p. 19).

8.030 PLAINTIFF'S PROBLEMS WITH ALCOHOL

Plaintiff consumed alcohol for fourteen years in the State of Washington, and over said period was arrested on eleven (11) separate occasions for alcohol-related

offenses, all by the stte police or the police of the City of Seattle, and was convicted in the Seattle Municipal Court, the Seattle District Justice Court and the King County Superior Court over a period of eleven or more years on seven or eight separate charges of alcohol related offenses. Plaintiff's record of alcohol related offenses were known to the city, county and state, yet the state and its licensees continued to sell and dispense to Plaintiff alcoholic beverages with no warning of the consequences of their consumption except that excessive consumption and driving were to be contradicted. Not until Plaintiff was directed by the Honorable Frank J. Eberharter to become an in-patient of the Care Unit of Riverton General Hospital was Plaintiff plainly and fully informed of the fact that he cannot drink any alcoholic beverages and that he

is powerless over alcohol in his life if he consumes any alcoholic beverages.

8.040 PLAINTIFF'S TREATMENT

On May 1, 1977, after finally being able to borrow $2,500.00 to cover the costs of treatment, Plaintiff was admitted to Riverton General Hospital, the Care Unit, for the treatment of alcoholism and informed he was an "Alcoholic", given information that leads him to believe and allege that he has had that condition since early in life, that the consumption of alcoholic beverages at any time while he has been in the State of Washington in any amount has posed an immediate threat to his life, that he suffers from "hypoglycemia", a not unusual affliction that contrindicates the consumption of alcohol, had suffered some liver and brain damage and was lucky to be alive. Plaintiff further learned that he is one of those one out of nine or ten consumers of alcoholic beverages who suffer

from the disease of alcoholism. He was further informed and learned that he could live a normal, beneficial and socially acceptable life free from alcoholic beverages and the ravages that he had previously accepted as normal while consuming said beverages. This treatment took 21 days of in-patient care, 10 weeks of follow-up, a change of lifestyle and a direct cost of about $2,600, and included a good physical examination, dietary education and vitamin regime, and extensive class-work participation.

9.010 THE TERM "ALCOHOLIC"

The term "alcoholic" as used here is a term relating to all persons who in their physical, mental or emotional being are adversely affected to the detriment of their lives or health by their personal consumption of alcohol and to whom the ingestion of alcohol is a danger to them because it is a toxic, narcotic, addictive,

allergenic, stimulant, depressant and/or caustic or other natures as a food, drug or hazardous substance.

9.020 Approximately 7[illegible]% of the adult population now drinks alcoholic beverages. About 10% of those drinkers, or an estimated 250,000 are alcoholics in the State of Washington. The present average costs of in-patient treatment at private institutions for recovery is $3,500.00 each. Were all to utilize such in-patient treatment, the cost could reasonably be $875,000,000.00. Such one-time costs are of but small significance compared to the continued annual loss to those people, their families and the trade, commerce, health and wealth of the state.

9.030 As a class, alcoholics have suffered mental and emotional anguish, public and private humiliation and economic disadvantages that make it difficult and in

many cases impossible for them to individually present their claims to the state or to post bonds for costs to the state. Furthermore, the only successful organ of recovery, Alcoholics Anonymous, encourages them to remain anonymous to support and further their recovery and the requirements of public claims infringe upon their basic beliefs in anonymity protected by the First Amendment. Nevertheless, the courts have the power to protect such anonymity and have readily done so where it has been called to the court's attention that such protection is for the general welfare. Such protection should be afforded on a class basis in this action.

Opposition

Office-Supreme Court, U.S.
FILED
AUG 27 1981
ALEXANDER L. STEVAS,
CLERK

No. 81-284

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1981

EDWARD D. CAMPBELL,

Petitioner,

v.

STATE OF WASHINGTON and KING COUNTY,

Respondents.

ON WRIT OF CERTIORARI TO THE WASHINGTON STATE SUPREME COURT AND DIVISION I OF THE COURT OF APPEALS OF WASHINGTON

MEMORANDUM OPPOSING CERTIORARI

KENNETH O. EIKENBERRY
Attorney General
State of Washington
PHILIP H. AUSTIN
Deputy Attorney General
(Counsel of Record)
JOHN HENNEN
Senior Assistant Attorney General
Temple of Justice
Olympia, Washington 98504
(206) 753-6205
NORM MALENG
King County Prosecuting Attorney
THOMAS WOLFENDALE
Deputy Prosecuting Attorney
516 Third Avenue
Seattle, Washington 98104
(206) 583-1437
Attorneys for Respondents

STATE PRINTING PLANT OLYMPIA, WASHINGTON

No. 81-284

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1981

EDWARD D. CAMPBELL,

Petitioner,

v.

STATE OF WASHINGTON and KING COUNTY,

Respondents.

ON WRIT OF CERTIORARI TO THE WASHINGTON STATE SUPREME COURT AND DIVISION I OF THE COURT OF APPEALS OF WASHINGTON

MEMORANDUM OPPOSING CERTIORARI

KENNETH O. EIKENBERRY
Attorney General
State of Washington
PHILIP H. AUSTIN
Deputy Attorney General
(Counsel of Record)
JOHN HENNEN
Senior Assistant Attorney General
Temple of Justice
Olympia, Washington 98504
(206) 753-6205
NORM MALENG
King County Prosecuting Attorney
THOMAS WOLFENDALE
Deputy Prosecuting Attorney
516 Third Avenue
Seattle, Washington 98104
(206) 583-1437
Attorneys for Respondents

No. 81-284

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1981

EDWARD D. CAMPBELL,

Petitioner,

v.

STATE OF WASHINGTON and KING COUNTY,

Respondents.

ON WRIT OF CERTIORARI TO THE WASHINGTON STATE SUPREME COURT AND DIVISION I OF THE COURT OF APPEALS OF WASHINGTON

MEMORANDUM OPPOSING CERTIORARI

The Petitioner raises eleven separate Questions Presented for Review. (Pet. i-v) Contrary, however, to the requirements of Rule 21.1(h), he nowhere discloses how or where these questions were either raised or passed upon in the courts below. Further, the opinion of the Court of Appeals of the State of Washington, Division I (Pet. App. A-1) likewise fails to reveal how any federal questions were raised or ruled upon. Nor do any of the additional materials in Appendix A, excerpted from the proceedings below, offer any assistance in this regard.

Similarly, although the excerpts from the Petitioner's Complaint (Pet. App. C-30 through C-38) tell us much about alcohol and alcoholism, from which the Petitioner has undoubtedly suffered much (Pet. 4), they show no legal connection between the Petitioner's problems with alcoholism and any question of federal law.

It is clear that the Petitioner is on a crusade against the use of alcohol. It is completely unclear, however, how this Court has jurisdiction in this case, so as to assist him in that crusade.

Therefore, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

KENNETH O. EIKENBERRY
Attorney General
State of Washington

PHILIP H. AUSTIN
Deputy Attorney General
(Counsel of Record)

JOHN HENNEN
Senior Assistant Attorney General
Temple of Justice
Olympia, Washington 98504
(206) 753-6205

NORM MALENG
King County Prosecuting Attorney

THOMAS WOLFENDALE
Deputy Prosecuting Attorney
516 Third Avenue
Seattle, Washington 98104
(206) 583-1437
Attorneys for Respondents